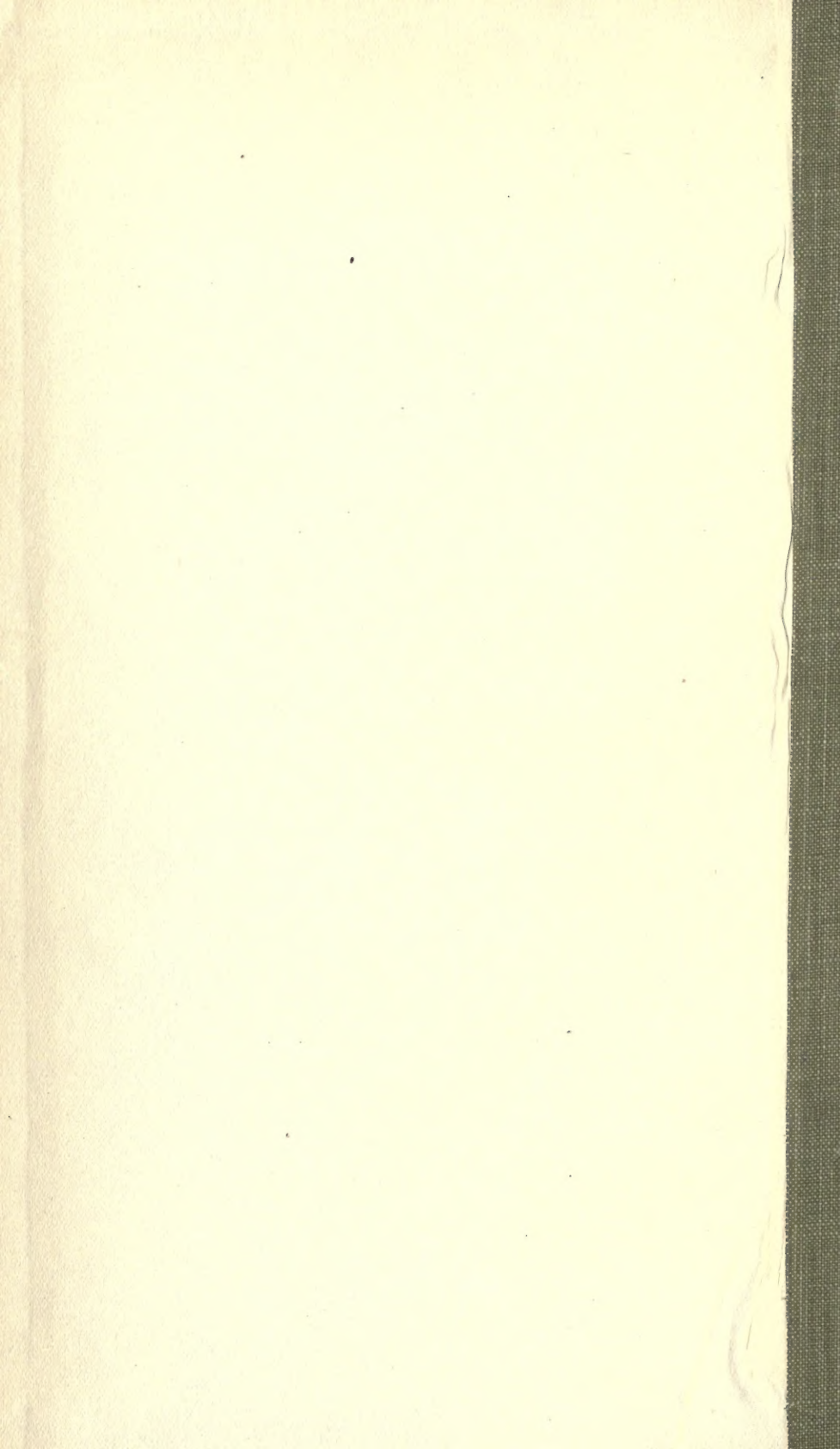


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PROPRIETARY GOVERNMENT IN PENNSYLVANIA

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STUDIES IN HISTORY, ECONOMICS AND PUBLIC LAW

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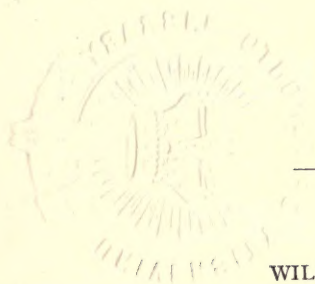
HISTORY
OF
PROPRIETARY GOVERNMENT
IN
PENNSYLVANIA

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HISTORY OF PROPRIETARY GOVERNMENT IN PENNSYLVANIA

INTRODUCTION

THE English colonial governments were of three varieties: first, provincial establishments, the constitutions of which were outlined in the commissions and instructions given by the crown to the governors, and the assemblies of which, held under royal authority, had their share in making ordinances which were local in character and not repugnant to the laws of England; secondly, charter governments, which were in origin and nature civil corporations; thirdly, proprietary governments, which were essentially feudal principalities, upon the grantees of which were bestowed all the inferior regalities and subordinate powers of legislation which formerly belonged to the counts palatine, while provision was also made for the maintenance of sovereignty in the king, and for the realization of the objects of the grant.

From the reign of William I. dates the origin of the great palatine earldoms of England, the overlords of which exercised particular rights known as the *regalia minora*. They were the seignorial lords of the county palatine. From this relation, according to the principles of the feudal system, arose the privileges of mines, wastes, and forests, escheat, forfeiture, wardship, and jurisdiction, both civil and military. More specifically, the *regalia minora* consisted of the right to hold courts of chancery, exchequer, admiralty, wards and liveries, and all varieties of pleas therein; to receive the entire profits of these

courts, to appoint chancellors, justices of the peace, sheriffs, coroners, escheators, and other officers, as the king did for the rest of the realm; to issue writs, precepts, and commissions in their own name, to have a mint and coin money, to levy taxes and subsidies, to grant charters for markets and fairs; to create a palatine nobility, and to hold councils in the nature of parliaments. In short, the counts palatine acted as independent princes, under the limitations of their oaths of homage and fealty to the king. At first established primarily to defend the borders, and, therefore, endowed with special power, they gradually became subject to direct royal control. This fact is evidenced by the statute 27 Henry VIII, chap. 24, which extended the power of the crown over Durham, providing that the king alone should pardon treason and felonies, appoint justices of oyer and terminer, of assize, of the peace, of jail delivery, and that all prerogative and judicial writs should be issued in his name, the form of indictment being changed from "contra pacem episcopi" to "contra pacem regis." Moreover, the crown was to receive all fines and forfeitures for the non-execution or insufficient return of writs and processes, and all officers of the palatinate should be amenable to the laws of the realm. These regulations greatly narrowed the judicial powers of the counts palatine. But the custom of holding councils in Durham continued till the time of Charles II, when burgesses from that county were admitted to parliament.¹

When the territorial and governmental system of Pennsylvania shall have been described, it will appear that that province was a huge fief bestowed on the proprietor by the Crown, and in form was a county palatine. The proprietor may thus be regarded as in possession of all the ancient rights of a count palatine, with the exception of those the exercise of which was otherwise provided for, or was specifically denied.

¹ Surtees, *History of Durham*, i, pp. xvi-lxix; Stubbs, *Constitutional History of England*, ed., 1880, i, p. 308; Sharswood, *Lectures before the Law Academy of Philadelphia*, 1855; Blackstone, *Commentaries*, i, p. 115.

Let us now examine briefly the nature of an English royal charter. An analysis will show that it consisted of the premises, the movent clause, the *habendum* and *tenendum* clauses, the warranty clause, the penal clause, and the datal clause. The first stated the name and title of the grantee, a description of the thing granted, and the reason or consideration for its bestowment. The second, though often included within the first, expressed the reasons for the grant. The third limited and defined the estate granted, and the tenure by which it was held. The warranty clause recapitulated the name of the grantee, the description of the thing, and the service or rent to be rendered. Lastly, the penal clause contained the punishment that would follow any attempt to infringe the privileges granted. More specifically, however, the colonial charters stated the names of the grantees, the territory and tenure, in the case of a corporation the organization of the council and the right to admit new members, the privilege to transport persons and goods, exemption from duties except under certain conditions, the provisions for the appointment of officers and the administering of oaths. Furthermore, provision was made for the organization of subordinate government in the colony, for the exercise of power through ordinance and instruction, the care for general defense and dependence, and the restriction that the laws of the colony should be conformable to reason and to the laws of England. Lastly, the charter should be interpreted in a way most favorable to the grantee.

To this general class of documents belonged the proprietary charter of Pennsylvania. Though issued by a Stuart king, it was drawn in plain and simple terms, agreeably to law and reason and with due regard to the rights of both crown and subject. The control of parliament was also more clearly recognized than in any earlier charter. But this is probably to be explained by the history of Massachusetts. The care taken to guard the supremacy of the home government was due to an anxiety to prevent a repetition of the disputes that had arisen

with that colony. Laws inconsistent with those of England had been passed by its general court. The navigation acts had been disregarded, money had been coined, and an attitude in general assumed, which was inconsistent with the maintenance of imperial control. Hence, to prevent the dangers of misconstruction and design, a requirement was introduced into the charter that the laws of Pennsylvania should be transmitted to England within a specified period. Penn was ordered to employ an agent, because the Massachusetts general court had refused or delayed to appoint any. Finally, provision was made for the free use of the Anglican forms of worship, though that had been made impossible in Massachusetts.¹

If the question, whether or not the Pennsylvania charter was the best example of a proprietary grant, is raised the answer given will depend upon the standpoint from which it is viewed. If we consider only the essential characteristics of a proprietorship as a palatine jurisdiction, the Pennsylvania grant is certainly inferior to that of Maryland and the Carolinas, because the powers bestowed are more definitely limited. But if we examine it from the point of view of a careful supervision of the colonial establishments by the English government, we shall find that, while all the important feudal powers were given to the proprietor, they were so limited as to bring them into subordination to the system of imperial control. In this respect, and with a view to the attainment of this object, the charter of Pennsylvania was superior to those of Maryland and the Carolinas.

After these general observations concerning the charters, it only remains necessary in this introduction to refer briefly to the location of Penn's proposed grant, and the efforts he made to obtain the charter which should transfer it to him. The fact is well known that by the middle of the seventeenth century, the Dutch and Swedes had established small settlements or trading posts near the Delaware River. They remained in

¹ Chalmers, *Political Annals*, pp. 635-640.

possession of the country till 1664, when the region, as a part of New Netherland, was conquered by the English.

The grant to the Duke of York in 1664 did not extend westward beyond the Delaware, though magistrates were appointed under his direction, and exercised jurisdiction especially over the region embraced within the present state of Delaware, known at that time as the "county of New Castle," or later as the "Three Lower Counties on the Delaware." But in 1681, within the territory of Pennsylvania, lived only a few Swedish farmers and traders, with perhaps some Quakers who had drifted over from the Jerseys.¹

As to the origin of the grant of Pennsylvania, it may be said that for several years prior to 1681 Penn had been financially interested in the Jerseys. He had held a large part of the soil of these in trust, and had subsequently become one of their principal proprietors. Still he never viewed these provinces as a sphere in which to make religious and humanitarian experiments, while in fact his pecuniary interest in them gradually dwindled till it became of no practical importance. But the acquaintance with the country, slight though it was, which Penn gained through his connection with the Jerseys, enabled him, when his aspirations sufficiently broadened, to choose Pennsylvania as the field for his "holy experiment." It seems that the crown, for sundry services, owed his father, Admiral Penn, upwards of £16,000. That officer had sought in extinguishment of this debt to obtain a grant of land in America, but, failing in this, at his death he suggested the plan to his son. He immediately set about its execution. Knowing how loath Charles II. was to part with money, he presented a petition, June 1, 1680, outlining the extent of the grant desired in lieu of the debt of £16,000, and mentioning therein only pecuniary reasons.²

¹ *Charter and Laws of the Province of Pennsylvania*, 1682-1700, pp. 416-458.

² Anderson, *History of Trade and Commerce*, iii, p. 76; Hazard, *Annals of Pennsylvania*, pp. 473-4.

Though Charles was very willing to part with that which had cost him nothing, still long deliberations followed the reception of the petition. The committee of the privy council for plantation affairs held several meetings at which the counsellor for the Duke of York and the agents of Lord Baltimore played an important part. At length, March 4, 1680, O. S.,¹ Penn obtained his desire. The charter which he received, was originally drafted by Penn himself from that of Maryland as framed for Lord Baltimore in 1632.² It was revised by Chief Justice North, who probably added the clauses concerning the power of parliament to legislate, and the transmission of colonial laws to England.³ Not only was the charter granted, but a royal letter was sent to the inhabitants, April 2, 1681, commanding due obedience to the proprietary, his heirs and assigns. The Duke of York also executed a quit-claim deed of the region included within Pennsylvania, though legally his jurisdiction did not extend over the new grant.⁴

¹As many of the authorities used in the preparation of this work are in manuscript, I have thought it wise to adhere throughout to the "old style" of reckoning time.

²In one of the rough drafts of the charter of Pennsylvania was a provision that Penn should be given the powers of a bishop of Durham as amply as they had been conferred on Baltimore, and should even be allowed to bestow honors and titles. It is probable that the provision was a suggestion of some of Penn's friends. Penn MSS., *Charters and Frames of Government*.

³Hazard, pp. 476, 486.

⁴*Charter and Laws of Pa.*, p. 466.

PART I

LAND

CHAPTER I

EARLY STIPULATIONS CONCERNING LAND GRANTS

IN order to understand the nature of the land system we must consider those terms of the charter which dealt directly with the grant of territorial powers and possessions, for under and in accordance with the provisions of the charter both the territorial and governmental administration must be organized and managed.

The grant of land embraced all that section of country bounded on the east by the Delaware, from a point twelve miles north of Newcastle to the forty-third degree of north latitude, if the river extended so far; but if not, then by a meridian line drawn from the head of the river to the forty-third degree. The territory granted also extended westward through five degrees of longitude, as computed from the eastern bounds. The region was to be bounded on the north by the beginning of the said forty-third degree, and on the south by a circle drawn twelve miles distant from Newcastle, northward and westward to the beginning of the fortieth degree of north latitude, and by a straight line drawn thence westward to the limit of longitude. The use of the waterways was given, also the soil and its appurtenances, the islands,¹ lakes and

¹ Several attempts were made in petitions to the crown—notably in 1721 from Charles Gookin, a former governor of the province, from Cadwallader Evans in 1755, and from Lord Rochford in 1772—to deprive the Penns of their rights to the islands in the Delaware. The proprietors, in hearings before the Privy Council and the Board of Trade, protested vigorously against these attempts,

rivers, fishing rights, mines and their products, with the exception of one-fifth of all gold and silver ore, which was required as a part of the customary nominal rent.¹

Again, Penn, his heirs and assigns, were constituted true and absolute proprietors, the king reserving to himself and his successors their sovereign rights, as well as their claims to the faith and allegiance of the proprietors and of the future inhabitants of the province. All the premises then should be possessed and enjoyed by the grantee for his own advantage. The tenure was of the king in free and common socage, by

showing that not only were the islands given by charter to William Penn, but that they had long been inhabited and improved by persons under the jurisdiction of Pennsylvania. All such petitions, however, were either withdrawn or rejected. Penn MSS., *Penn Letter Books*—iii, Thomas Penn to West, March 17, 1755; viii, to Peters, July 22, 1765; x, to Richard Penn, April 8 and 14, 1772. Penn MSS., *Philadelphia Land Grants*.

¹ About 1732, soon after the assumption of control by the sons of William Penn, complaint arose that the patents for land reserved to the proprietors three fifths of the product of the gold and silver mines found therein, though the royal charter reserved only one fifth. The question was, whether or not the products of royal mines regularly passed in a deed to the purchaser of land. The Penns stated that they never did so pass, unless expressly mentioned, because the province had not been accepted from the king in trust for others. Moreover, the reservation of three-fifths of gold and silver was of early origin. But, as was usual, the complainants fixed their attention on what they regarded as an inconvenient diminution of their incomes, without troubling themselves to search diligently for the precedents which would explain it.

In 1732 the Penns ordered that in all patents a proportional part of gold and silver ore should be reserved, a right that had not been mentioned in the earlier documents of that sort. Accordingly, in addition to that reserved to the crown, three-fifths clear of all charges was excepted on royal mines, and one fifth on all others. Lloyd, *Vindication of the Legislative Power*; Logan, *The Antidote in Some Remarks on a Paper of David Lloyd's, Called a "Vindication," etc.*; Penn MSS., *Official Correspondence*—i, J. Logan to S. Clement, May 17, 1722; iii, Thomas Penn to Gov. Thomas, Aug. 20, 1741.

The need of contention over gold and silver mines was slight, but the vast resources of Pennsylvania in other minerals might well have been a cause of disagreement had they been known.

fealty only for all services, and not by knight's service.¹ Besides the payment of one-fifth of all gold and silver ore, already referred to, two beaver skins must be annually delivered at Windsor Castle.

All the said territory, inclusive of the adjoining islands, was then made a province and seigniory, and was named Pennsylvania.²

Penn was empowered to grant the land in such proportions as should seem fit. The grantees were to hold it in their own

¹ The words "not *in capite*," which are used as part of the description of tenure in this and the other colonial charters, seem to express the very reverse of the truth. Tenure *in capite* means a tenure immediately of the crown, and it was thus that Penn and all others who received royal charters held their grants. "Men seem to have been led into a confused way of speaking upon this subject," says Madox (*History of the Exchequer*, i, p. 621), "by supposing tenure *in capite* to have been a distinct kind of tenure, in like manner as tenure by knight's service, socage, and others were. Tenure *in capite* was so far from being a different sort of tenure by itself, that it might be predicated of the several other tenures; that is to say, a man might hold of the king *in capite* either by barony, or by knight's service, or by serjeanty, or by socage, or by fee-ferm. And if it be said that a man held of the king *in capite* without mentioning expressly by what service, it is to be understood that he held of the king immediately, in opposition to his holding immediately of another; and that phrase was used in such case when the service was not in question, but the tenure only, to wit, whether it was mediate or immediate." The statute of 12 Charles II, chap. 24, added to the confusion. Its title was, "An act for the taking away of tenures *in capite*, and by knight's service and purveyance, etc." Its purpose was to abolish tenure by knight service, and other feudal tenures and services. "There are some clauses in that statute," continues Madox, "which, if I do not mistake, are worded in terms so complex and indistinct that, like a two-edged sword, they cut both ways." In fact, the words, "not *in capite*," are repugnant to the words, "to be held of us, our heirs and successors," as stated in the charter. A grant held immediately of the crown was held *in capite*, even though the form of tenure was socage.

² Because the country was known to be mountainous, the proprietor chose for it the name New Wales. The king's secretary, however, who was a Welshman, refused to have it so designated. The proprietor then suggested the name Sylvania, to which the syllable Penn was prefixed in honor of his father. The last change was made without the grantee's consent. Hazard, *Annals of Pa.*, p. 500.

right, not directly of the king but of the proprietor, in fee simple, fee tail, or for a life or lives, or a term of years, and by such services, customs, and rents as might appear to him expedient, the statute of *quia emptores* or others to the contrary notwithstanding. He might erect manors with courts baron and view of frank pledge, though it is stipulated that persons who should receive manors might grant or sell any part of their lands in fee simple or in any other estate of inheritance, to be held of the said manors.

In England the barons or lords who held of the crown frequently granted out to others large portions of their estates, which were also erected into manors. These inferior lords also made grants to third parties, and so on, each subdivision being still capable of becoming a manor. But the superior lords found that by this method of subinfeudation they lost part of their feudal profits. This gave rise to the statute of *quia emptores*, just mentioned, which directed that in all sales or enfeoffments of land the purchaser should hold, not of the immediate grantor, but of the chief lord of the fee of whom the seller himself held. But in order that no subinfeudation should be permitted in Pennsylvania, it was expressly provided in the charter that upon ensuing alienations, the lands should be held of the same lord and his heirs of whom the grantor had held, and by the same rents and services.

From this it appears that the principles of the English land law obtained in Pennsylvania, and would continue to be observed till changed. Purchasers of the soil held immediately of Penn, not of the king, and that by socage tenure. As the title of the proprietary to the soil was in point of law feudal and not allodial, he did not believe himself authorized to make grants upon allodial principles. The estate possessed by the grantee would thus be a tenement, not an allod. It was subject to quit-rent, to forfeiture and to escheat. Pennsylvania then may be viewed as a seignior, but divested of the heaviest burdens imposed by feudal law, and endowed with such pow-

ers of territorial control as distance from the realm of the lord paramount required. Penn, being vested with the absolute proprietorship so far as by charter, independent of Indian purchases, such a right could be conferred, was at liberty to sell and lease lands within the limits of the territory and under the powers granted.

Penn and his sons divided the land, roughly speaking, into three parts. The first comprised the millions of acres called the common land, which was sold generally at uniform prices, and to which, unless otherwise stated, the following discussion of the land system will refer. The second included the proprietary tenths or manors reserved and held by the proprietors jointly, and consisting usually of one-tenth of the choicest lands in a given tract. The third was the private estates of the individual proprietors, either purchased by one of them from the others, or from persons in the province who had previously bought the property in question.¹

Having secured his title to the province, Penn soon after issued his proposals and "Account" of Pennsylvania, together with a statement of the powers necessary for the proper management of the land when granted. The documents stated that these were made public for the benefit of such as were or might be disposed to transport themselves or servants to the new colony. It dealt with the nature and necessity of colonies, the cost of transportation, and the kind of persons most suitable for colonists. It also contained a general description of the country, and a statement of the rights and privileges that settlers might reasonably expect. The conditions of sale were the following. Each share sold was to be called a propriety, and to include 5,000 acres free of Indian incumbrances. The price of each share was fixed at £100; and after 1684 it was liable to a quit-rent of one shilling for every hundred acres. To those who desired to rent land it would be let in estates not exceeding

¹ P. L. B. x, T. P. to John Penn, Aug. 13, 1771; to Hockley, Aug. 22, 1771.

200 acres each, at a quit-rent of one penny per acre. Masters should receive 50 acres per head for each servant brought thither; and 50 acres should be given to each servant when his term of service had expired. As purchasers of still larger tracts were likely to appear, Penn advised that overseers should be sent with the colonists, and that certain allowances for dividends and commons should be made.¹

While yet in England he sold large tracts of land in Pennsylvania to persons who were technically known as "first purchasers." In agreement with them he published certain "Conditions and Concessions." In this document various rules of settlement are laid down, together with directions for building roads and highways, for kindly treatment of the Indians, and for the laying out of a large town or city on the river side, in the most convenient place for health and navigation. To be more specific, it was provided that every one who purchased or leased 500 acres in the province at large, should receive 10 acres in the proposed city, if the space therein would allow it. Purchasers of 1,000 acres or more were not to have over 1,000 acres in any one locality, unless within three years they had settled a family on each thousand acres. Purchasers of 5,000 acres or more might form townships. Moreover, within three years after his land had been surveyed, every man must appropriate and settle it, or, on complaint to the proprietor that the rules of settlement had not been obeyed, new-comers might be given possession. In this case, when the complainant had paid the purchase money, the interest, and the fees for surveying, the proprietor should make him an actual grant of the lands not rightfully settled. Rivers, woods, and all mines save those of gold and silver, whether mentioned in the deed or not, should be enjoyed by the purchaser into whose hands they fell, while special encouragement was given to those who would search for gold and silver mines. Lastly, from every 100,000 acres

¹ *A Brief Account of the Province of Pennsylvania, 1681; Some Account of the Province of Pennsylvania, 1681.*

the proprietor reserved 10,000 acres for himself, on the condition that in each instance they should lie compactly together.¹

In October 1681 three commissioners were appointed to superintend the settlement of the colony. These, with Penn's cousin, Capt. Markham, who had been dispatched a short time previous to take possession, were to act in accordance with instructions, and were to execute the "Conditions and Concessions" on behalf of Penn. They were to lay out the town, and 10,000 acres contiguous thereto for its liberties. They were also to assign the proportions of land to which purchasers were entitled within the town. But if they could not find land bordering on the Delaware in quantities sufficient to allow lots of 100 acres for each purchase of 5,000 acres in the province, they were to get what they could, and assign the lots proportionately, even if only 50 acres in the city were allowed for each propriety. If they found all the land suitable for a city already occupied by Dutch, Swedes, or English, they were to secure from them a release, adding inducements even to the extent of freeing the owners from quit-rent, and urging the weakness of their titles, secured as they were only by grants from the governor of New York.²

They were enjoined also to be honest in buying lands from the Indians, and to guard against any deceit on the part of the savages. They were forbidden to sell any land until the proprietor came in person. Finally, they should survey the country and allow no old patents to stand, but offer to renew them and, where the land had been surveyed, return the survey money.³

¹ Hazard, *Annals of Pa.*, pp. 516-520.

² The Swedes were given 820 acres in the liberties in exchange for the land on which the city of Philadelphia later stood. Reed, *Explanation of the City and Liberties*, Philadelphia, 1774.

³ Hazard, *Annals of Pa.*, p. 527, *et seq.* On his arrival, by an act of assembly passed at Chester, Penn naturalized the foreign-born settlers. He was, of course, desirous of extinguishing titles and claims derived from sources other than himself.

If, as provided in the "Conditions and Concessions," lots to the extent of two per cent. of the total purchases made in the province were granted in the town, it was found that it would cover six or seven thousand acres. As no available site of that area could be found, the commissioner did nothing but explore the country till the arrival of Penn in October, 1682. In fact such a city would have been absurd and impracticable. Therefore, after mature deliberation, the proprietor laid out a town two square miles in extent, and divided it into lots of various sizes.¹ Out of this and the liberties, the first purchasers were to have their two per cent.

It is probable that lots in the city proper were granted by Penn to the first purchasers in order to reconcile them to the shifting of their original city lots into the liberty land. Furthermore, it is likely that the liberty lands were always considered part of the amount purchased, and were taken out of it when the warrant was issued to survey the common land; but city lots were viewed only as appurtenant to the purchase, not as an actual part of it.²

Hence several instances occur in which the commissioners of property confirmed by patent lands the right to which originated in grants and promises made by Sir Edmund Andros and Gov. Nicolls of New York. *Pa. Archives*, 1st Series, i, p. 28.

¹ Dean Prideaux says that the plan followed in the laying out of Philadelphia was based on that of ancient Babylon. *The Old and New Testament Connected*, ed. 1729, vol. i, p. 135.

In 1690 Penn issued proposals for a city on the Susquehanna. He offered shares at £100 each for 3,000 acres, free from Indian claims and without quit rent for five years after settlement. Each purchaser, also, was to have a lot in the city proportionate to his purchase. But the scheme failed. Hazard, *Register of Pa.*, i, p. 400.

² The sons of William Penn believed that the "great town" mentioned in the "Conditions and Concessions," and in the deeds to the first purchasers, was really the liberty land, the lots in the city being an afterthought. Penn's instructions to his three commissioners would indicate this, and, as they claimed, had no reference to the tract which was afterward laid out for the city of Philadelphia. P. L. B. ix, T. P. to Tilghman, Aug. 5, 1767; x, to Fell, March 5, 1770, and to Gaskell, May 14, 1770.

The exact words of the instructions were these: "Lay out 10,000 acres con-

Thus the design of the "Conditions and Concessions" was so far carried out that each purchaser had a town lot proportionate to the extent of his common land, although of a smaller size.

The Schuylkill divided the liberties into two parts, and the lots therein were more or less valuable, according to their location. The liberty lands laid out on the town side of the Schuylkill were in the proportion of 8 acres to a grant of 500 acres. In the warrants for the northern liberties the proportion of 8 acres of liberty land for 492 acres of common land is almost uniform. Those who had warrants for 490 acres of common land were given 10 acres of liberty land lying on the opposite side of the river. Probably the superiority of the land itself was more than a compensation for the one-fifth part taken from the holders of lots in the northern liberties. But when people took up the whole of their grant of the common land, it was presumed that they chose to relinquish the liberty land.¹

There is, however, no record of this plan in existence or of tiguous to the place," *i. e.*, the site chosen for the city, "as the liberties of the town, and the proportion in the said town is to be thus: every 5,000 acres shall have 100 acres of land *out of that 10,000 acres.*" It is difficult to reconcile this order with the statements in the "Conditions and Concessions," that each purchaser was to have so much land in the city as would be proportionate to the amount he had bought or rented elsewhere in the province; "that the land in the town should be laid out together after the proportion of 10,000 acres of the whole country" to 200 acres, "if the place would bear it;" and that "the proportion of lands in the great town or city shall be after the proportion of 10 acres for every 500 acres purchased, if the place will allow it." Admitting that no site could be found for such a large city, covering 10,000 acres, this does not explain why, in July, 1681, the proprietor should agree to give the first purchasers lots in the city itself proportionate to their purchases of the common land, and in October of the same year, *before any steps had been taken to locate a site*, direct his commissioners to lay out these very lots, not in the city, but in its liberties. At any rate, whatever his design may have been, Penn found it necessary to grant city lots in addition to the concessions of the two per cent. in the liberties, in order that the expectations of the original purchasers might be realized.

¹ P. L. B. ix, T. P. to Tilghman, Feb. 14, 1767.

any alteration of the original agreement, nor any written evidence of the consent of the purchasers to the new arrangement; but quite a long series of acts in the books of the land office would appear to establish it.¹

The original concessions and agreements concerning both the city lots and the common land of course related exclusively to the first purchasers², there being only one case where a person who was not a first purchaser received lots by survey in the city, and he never secured possession.³ Still, when the liberty lands were allotted extraordinary claims based on real and supposed grants from Penn were set up, and continued to be urged with considerable vigor throughout the entire history of the province.

These so called "old rights" of the first purchasers were granted by deeds of lease and release. The lands were not located or surveyed at the time of the grant, but it was presumed that the surveys might be made at a later time. As the deeds were not always recorded, and as the purchases were often made for speculative purposes by persons who never visited the province, titles were frequently defective from the outset.⁴

¹ The commissioners of property stated, in 1712, that they had "no authority to make any variation from the plan of the city of Philadelphia, as it is laid down in the printed draughts and references, that having been the general foundation of the surveys and titles to all or most of the valuable lots in the city from the first location. The purchasers have no right to any lots in the city for any grants or concessions made by the proprietary by his deeds of sale or otherwise in England, those concessions relating only to what are called liberty lands; but only from his grant after his arrival here, which he then concluded should be the established rule." *Pa. Arch.*, 2d series, xix, pp. 351, 528-532, 547-550; P. L. B. ix, T. P. to Tilghman, July 7, 1766.

² *Binney's Reports*, pp. 476-486.

³ *Penn, Physick MSS.*, i, J. Willcox to William Penn, Aug. 1, 1701.

⁴ This fact and the desire to provide for his children prompted Penn, in 1705, to direct James Logan, the secretary of the land office, to buy up the claims of descendants of first purchasers and of those to whom their rights had been conveyed. *Penn and Logan Correspondence*, ii, p. 102.

The tracts having been neglected, other persons took them up, as the "Conditions and Concessions" had provided. Then transfers of portions of these were made by warrant to third parties, and orders were again issued to survey lots from such shares for new purchasers. In this way a considerable surplus might be surveyed beyond the amount of the original purchase. By the accumulation of old rights through purchase it happened that with each appropriation of the liberty land entire squares of city lots were bestowed on individuals. Indeed several persons bought up "old rights" and, without duly proving them, caused the city lots appurtenant to be conveyed to themselves, much to the prejudice of the proprietors.

The Penns showed that no person had, by virtue of the "Conditions and Concessions," a right to warrants of survey for lots in Philadelphia, except the first purchasers whose names appeared in the parchment list of August 22, 1682,¹ who drew for their lots,² and who, by the original warrant of survey, within a year should have paid the rent, enclosed their lots and, if possible, erected buildings upon them. Had this been literally carried out, the adjacent proprietary land would have increased to a considerable extent in value.³ Therefore, the proprietors believed that claimants whose predecessors had not in any respect fulfilled their agreements, should not have the lots at all. At any rate, the fact that they had failed to observe the regulations was no reason why the rent should

¹The number of acres bought by the first purchasers in England, according to Hazard (*Annals of Pennsylvania*, p. 576, and App.), was 566,000; according to Reed (*Explanation of the City and Liberties*), 709,535; and according to Physick (*Pa. Cash Accounts*), 860,501. The first estimate was probably the most accurate. There were three lists of the first purchasers, but as only the first two were filed in the land office, the authenticity of the third was questioned by the proprietary officers.

²When the plan of the city was made, large lots were laid out for purchasers of 20,000 acres or less. These were duly numbered in the draught, with a scheme for drawing the names. Map in *Reed's Explanation*, etc.

³P. L. B. ii, T. P. to Logan, Aug. 17, 1743.

not be demanded.¹ Hence orders were sent to the secretary of the land office, that he should allow no lots or lands to be surveyed on account of these "old rights" without warrants regularly issued from his office.² These warrants were to be obtained only in the following way. The persons making application under color of an "old right" had to produce before the secretary William Penn's original deed or patent, the others under which they legally derived title, and the opinion of the attorney-general thereon. They must also pay the arrears of rent from 1682,³ except where early settlement or improvement had been made, which was considered equivalent to a deed.⁴ But the secretary was to pay no attention to heirs or to those who held conveyances from them, provided they had only warrants of survey. For, said the proprietors, warrants of survey showed merely the request of a person who had not executed his part of the agreement concerning both the settlement and the purchase money to be paid later.⁵

All documents offered in support of an "old right" claim had also to be lodged with the secretary, till he and the surveyor general could ascertain whether the land

¹ P. L. B. ii, T. P. to Peters, Aug. 22, 1743.

² *Ibid.* i, Proprietors to Logan, Feb. 15, 1731. The proprietors thought that, unless a warrant therefor had been regularly issued, no person who owned "old rights" could legally locate them wherever he pleased. Those who chose to evade directions sent in conformity with this view were to be ejected, in order that, on appeal from the provincial court, a case testing the validity of the ejectment might be carried to England for trial. *Ibid.*, x, T. P. to John Penn, May 9, 1769.

³ Several instances are given in which persons into whose possession had fallen "old rights" to city lots, surrendered them to the proprietors because the lots, being subject to rents and other conditions, were worth far less than the arrears of rent with which they were encumbered. Penn MSS., *Philadelphia Land Grants*.

⁴ P. L. B., x, Juliana Penn to John Penn, Jan. 10, 1775; to Edmund Physick, Apr. 15, 1775.

⁵ *Ibid.*, ii, T. P. to Peters, Aug. 22, 1743; ix, to Tilghman, Sept. 12, 1766; Penn MSS. *Supplementary Proceedings*, T. P. to Peters, May 4, 1743.

had been previously granted to the person named in them, or to others to whom he had assigned the same. If it had not been so granted, a warrant was issued to survey it in the place where it was originally located, or in some other vacant but not more advantageous spot. When all these regulations had been complied with a patent under the great seal was granted for the land or lot in question. Then an acknowledgment of release, or of receipt of the patent, was signed and registered in the rolls office, while the original deed remained as a voucher in the secretary's office.¹

These regulations of course were very disagreeable to the "old right" claimants. They argued that as the lots were appurtenant to the common lands in the same sense that improvements are appurtenant, the proprietors had no right to impose rents.² They claimed that, if the applicant had deeds of lease and release reciting the "Conditions and Concessions," such should be a sufficient title, because a patent would simply impose a quit-rent. They claimed also that when they came to get patents for their lots, they had to pay for the warrant, the survey, the return, the patent, and its recording, besides being subjected to a variety of other inconveniences. Indeed, they went so far as to doubt whether Penn had any right to reserve for himself any land in the city or liberties.³ But, in spite of this opposition, the procedure, as outlined above, was the one usually followed by the proprietary officers in dealing with the "old rights."

¹ P. L. B., vii, Proprietors to Hamilton, Nov. 13, 1762; ix, T. P. to Tilghman, Sept. 12, 1767, and to John Penn, Jan. 7, 1768.

² A similar assertion had been made by the assembly as early as 1701. *Colonial Records*, ii, pp. 37-39.

³ Reed, *Explanation of the City and Liberties*; Franklin, *Works* (Sparks' Ed.), iii, p. 556.

CHAPTER II

GENERAL PRACTICE OF THE LAND OFFICE

EVEN though the land were disposed of, it would be useless without settlement. Had the colony failed, the grant would have been resumed. Hence both the benevolent attitude of the founder and his private interest obliged him to encourage immigration and the settlement of a part of the land on reasonable terms. Again, it was assuredly necessary to prescribe the way in which persons demanding grants of land should prove their claims. Provision must be made also for locating and surveying the tracts of land as claimed, as well as for authenticating the surveys when returned, and making out titles by grant or patent.

At the outset it must be remembered that, for many years after the settlement of Pennsylvania began, territorial affairs were in great confusion. If the proprietor formed any definite plan for the granting of land, it was found on trial to be impracticable. He did not have a clear idea of the extent of the province or of the difficulties incident to the settling of a wilderness, and to this cause may be traced many of the later disputes and complaints. His failure to make valid his title to the Lower Counties; his absence of fifteen years from the province, between 1684 and 1699; the involved condition of his private affairs, and the failure properly to preserve the records of grants, were inconsistent with any system of territorial administration, however rudimentary. To the loose way in which grants were made may be traced the origin of many of the later disputes, while it opened the way to the commission of many frauds against the proprietor and his sons.

Indeed, the original minutes of property show entries of all kinds of conveyances in abstract, of pedigrees, and to some extent even of intermarriages. As there was but one office of record, often no pains was taken to keep the enrollment of land grants distinct from other public matters, or even from private contracts and business of every description. Hence the territorial administration was the object of complaint through almost the entire proprietary period.

It was not until after the arrival of Thomas Penn, in 1732, that an effort was made to banish confusion from the land office. Under his direction more manors were laid out. Provision was made for collecting a new quit-rent. The price of land was somewhat increased, but large tracts were offered at reduced rates, provided a considerable number of people could be induced to settle on them. Certain measures also were adopted to mitigate the evil arising from illegal holdings, and to enforce the speedier payment of rents. But irregularity and confusion had so long prevailed, that improvement came slowly. In some cases the new rules unquestionably worked hardship to individuals, but gradually a harmonious management resulted.

The administration of territorial affairs was regularly entrusted to the officials of the land office.¹ They were the special agents of the proprietor, and consisted of a secretary, who at the same time was secretary of the province, a surveyor general and from three to five commissioners of property. The duties of the commissioners of property were to grant land and guarantee titles. They were presumably subject to Penn's orders, but owing to his unfortunate circumstances, they were often independent of control.

¹ In the earlier years of the province justices of the peace often received applications from persons desiring to take up land, and granted warrants to the surveyor to measure it and make return to the secretary's office. All land formerly granted, and not taken up or settled within the time specified by the justices, was considered vacant. Hazard, *Annals of Pa.*, p. 636.

With reference to the early regulations sent to the commissioners, Penn issued a proclamation, February 24, 1686, commanding that they should ascertain what lands were taken up, what were vacant, and what were most likely to give cause for discouragement to those who were able and willing to settle them. He ordered that all lands not properly seated within six months after the date of the proclamation, should be sold, provided the usual time allowed for the settling of plantations had already expired. But any privileges incident to this course of action should not extend to persons who had forfeited their lands by failure to observe their agreements. Such proceedings, however, seem to have had little effect, for no record appears of the forfeiture or regranting of lands.

The following year he ordered that no warrants of resurvey should be granted for land within five miles of any navigable river, and that, as the settlement of the adjoining territory would make it valuable, all land which by resurvey was found to be in excess of the amount purchased, should be reserved for himself. In this connection he also directed that no lands should be laid out adjoining any which were already inhabited, and that one-tenth of every township, and all the "Indian fields" therein should be reserved to himself.¹ At the same time he ordered the commissioners to grant no mines without his express warrant, and to forbid the felling of timber in his manors.² The regulations issued by his sons to their officers will be noticed as we proceed in the discussion of the land system.

¹ It was a common practice with the proprietors to order their officers to survey for new settlers lands which did not adjoin those already purchased or which were under cultivation. Similarly they directed their officers to leave in Philadelphia and other towns vacant lots lying between those already disposed of, in order that the land thus reserved might become more valuable by reason of the adjacent settlements. Such orders, however, were generally kept secret. P. L. B., iv, T. P. to Peters, Jan. 10, 1756.

² Huston, *Original Titles to Land in the Province and State of Pennsylvania*, p. 68 *et seq.*

But, as usual, the directions issued by William Penn were soon disobeyed. This fact occasioned the existence of many imperfect rights and claims to land. Moreover, since their task was a thankless one, and their remuneration very small and uncertain, the commissioners were occasionally unwilling to act. They had besides to encounter the opposition of political faction, which grew apace as the influence of the proprietor waned.

Associated with the commissioners were the keeper of the great seal, and the master of the rolls. The former, as the name implies, was in charge of the great seal of the province, and affixed it to patents, commissions, and other important public documents. The duties of the latter were mainly to enroll the provincial laws and to preserve public records. During the early history of the province the duties of these officers were occasionally performed by the commissioners themselves, but after 1746 the keeper of the great seal was regularly the receiver general.¹ The commissioners also acted as receivers of the proprietary revenue until 1689, when the office of receiver general was formally instituted,² and from time to time as the population increased and the proprietary interests became more extensive, deputy receivers were appointed in the different counties.

After John, Thomas, and Richard Penn had entered upon their proprietorship, in 1732, the duties of the commissioners were entrusted to John and Thomas. But, upon the return of Thomas Penn to England in 1741, none of the proprietors were in the province till 1771. The governor, George Thomas, however, in 1741, received two commissions, and from this time on the practice of granting such to each governor continued. In the governmental commission proper the governor was regularly forbidden to interfere with the management of the land system, except so far as the use of his official

¹ *Annual Report of the Secretary of Internal Affairs*, 1890.

² *Ibid.*, *Col. Rec.*, i, p. 313.

position could aid the proprietary officers in the performance of their duties. But in the territorial commission he was empowered by warrants issued by the secretary under the seal of the land office, to grant vacant lands and lots claimed under William Penn or the "young proprietors," according to the original terms of such purchases, and on condition that all arrears of rent and purchase money were duly paid to the receiver general. Furthermore, he was instructed to grant by similar warrants the common land on the terms in existence at the time of the commission, and under certain regulations to grant escheated lands as well, special attention being paid to the requirement that all rents reserved should be in sterling or its value according to the rate of exchange. After having received certificates of survey from the surveyor general, and of payment from the receiver general, he was authorized to grant patents under the great seal containing the reservation previously mentioned. These were to be recorded in the office of the recorder of deeds at Philadelphia. Lastly, he was ordered to grant licenses for ferries for seven years, to appoint and remove officials of the land office, and to exercise a general supervision over territorial affairs. The proprietors on their part promised to ratify his proceedings.¹

In 1741 also special agents were appointed by the Penns to manage their manors and private estates. In 1765 a board of property was constituted, and to it was entrusted the administration of territorial affairs.² It consisted of the governor, who was given the power of decision when projects injurious to the

¹ *MS. Commission Book B.; Pa. Arch.*, 1st Series, i, p. 625. Some evidence appears that as early as 1702 or 1704 the governors were given certain powers in territorial matters, subject to confirmation by Penn himself. It is probable, however, that this was discontinued after 1708. *Penn and Logan Corresp.*, ii, p. 185.

² Private applications to the proprietors concerning land were invariably referred to the officials in Pennsylvania, the Penns refusing to be considered in the light of mere landlords. *Penn MSS., Supp. Proc.*, T. P. to Peters, May 9, 1761; P. L. B., viii, to W. Smith, March 8, 1765.

proprieters were broached, the secretary, the surveyor general, the receiver general, and, in 1769, the auditor general.¹

Having thus indicated the duties of the managers of the land office, we are now prepared to consider warrants and patents. The method adopted by the proprietor for granting lands while in England was by deeds of lease and release, or of bargain and sale, executed by Penn or his steward, and the purchaser; but he made it a general principle to give no deed for lands sold until the purchase money was paid.² As we have already remarked, no particular locality to be surveyed was designated in these deeds, as that could be determined when the territory had been explored. But in each deed or conveyance was a clause obliging the grantee to have it duly registered in the public record office of the province. As near as can be ascertained, then, the early procedure did not differ much from the following: The secretary's office having been opened at Philadelphia, persons desirous of securing land went there to procure entry on record of their respective claims, these being based on the "Conditions and Concessions," or on special grants from the proprietor; but not infrequently applications were made without reference to any particular grant or regulation. At the same or at a subsequent time they demanded warrants of survey for the corresponding quantities of land, which were issued by the secretary, subject to the direction of the commissioners. These warrants issued under the lesser seal were directed to the surveyor general, who, after their execution by himself or deputies, and after the fees for surveying had been paid, returned certificates of the surveys to the secretary's office, and registered them in his own office as well.³ Then patents conformable thereto were issued under

¹ P. L. B., viii, T. P. to Peters, Sept. 20, 1765; ix, to Physick, Feb. 6, 1768; x, to Hockley, July 4, 1769, and Feb. 26, 1770.

² *Pa. Magazine of History*, x, p. 189 *et seq.*

³ It was the practice of the commissioners of property from 1708 to 1732 to accept the first return of a survey, if a patent was required, without demanding that

the great seal by the commissioners of property, when the necessary payments had been made.

Owing to the fact that the various documents and regulations did not always specify the location of the grant, several warrants might issue for tracts adjoining each other, or at some distance apart. Such warrants, however, differed from warrants to take up land, as these were for portions of a tract already surveyed, and founded on deeds which had already been paid for. It was often the case that an applicant for a warrant insisted upon land the location of which he had chosen, in spite of any regulations concerning townships, and refused to pay the deputy surveyor unless his wishes were followed. But as a general rule the applicants for warrants merely stated the number of acres desired, and before long was instituted the practice of designating the land as adjoining a body of water, or the property of a particular settler,¹ and as subject to settlement within a specified time.

We can thus see that, especially in early times, the warrants were by no means uniform in their language and specifications. They were usually divided into two parts, the first of which contained the motive or reason for their being demanded and described the object upon which they were to operate, while the other part directed the execution of what was desired under certain conditions and restrictions. Not infrequently the first part of warrants involving resurveys² was allowed to contain any special statements which the parties thought proper to

the warrant should be first entered in the surveyor general's office, and a formal return sent from it to the secretary's office. Hazard, *Register of Pa.*, xii, p. 362.

¹ Warrants in the land office at Harrisburg.

² The early grants were supposed to have contained a large amount of land in excess of what was expressed in the deed, or what the possessor by the original warrant of survey had a right to expect. Hence a method of granting warrants of resurvey was speedily adopted, and after the excess had been deducted, of confirming, by a new patent, the quantity as purchased. This eventually failed, for in some cases too much land was included, while in others mistakes and want of skill on the part of the surveyors caused widespread dissatisfaction.

set forth, and those to which expression had previously been given in their application. Sometimes they contained matters mentioned in the Indian deeds. Occasionally they stipulated the quit-rent, and the amount of purchase money which was either to be paid down or paid at some future time with interest. Sometimes they mentioned allowances for improvements. They often required that a patent should be taken out at a specified time, or stated that the performance of certain agreements was indispensable to their validity.¹ But what were known as "special warrants," were warrants which vacated rights to land and transferred them to other parties, because such agreements had not been complied with. Gradually, however, a set form of warrants was introduced. Notably in the warrants of Thomas Penn the new clause appeared providing for the payment of a year's rent at every alienation.² But it is doubtful if this was ever conscientiously put into execution, and the clause eventually was dropped. Later in the history of the province, moreover, the

¹ The early warrants ran generally as follows :

Pennsylvania, ss.:

By the Commissioners of Property :

At the request of ——— that we would grant him to take up ——— of land, ——— for which he agrees to pay to the proprietary's use ———, and the usual yearly quit-rent of ———, for each 100 acres. These are to authorize and require thee to survey, or cause to be surveyed, unto the said ———, in the place aforesaid, according to the method of townships appointed, the said quantity of ———, that has not been already surveyed nor appropriated, nor is seated by the Indians, he seating and improving the same within ——— after the date of survey, and make a return thereof unto the secretary's office, which survey, in case the said ——— first fulfills the above agreement, upon location shall be valid, otherwise the same is to be void as if it had never been made, nor this warrant ever been granted.

Given, etc., at Philadelphia, ———.

Commissioners' Names.

To ———, Surveyor General.

Warrants in the land office at Harrisburg.

² William Penn had pursued a similar method in the Lower Counties. P. L. B., ix, T. P. to Tilghman, Nov. 7, 1766.

practice followed by the land officers of sending merely a written order to a deputy surveyor to survey land was forbidden and all warrants were ordered to be issued in a regular manner.¹

In regard to the prices of the common land, they were sometimes expressed in the earlier warrants, but as a rule they were contained only in the patents. A portion of the purchase money, however, was usually paid, or secured by a mortgage² at the time of taking out the warrant.³ But in some cases patents were granted and short term bonds and mortgages taken for part of the price.⁴ Before 1713 £5 per 100 acres, and one shilling quit-rent, was the general rate. This was speedily changed to £10 per 100 acres. In the warrants issued under the trustees subsequent to 1719 the terms were £10 per 100 acres and 2 shillings quit-rent. For a number of years after 1732⁵ £15, 10 sh. currency was the regular price per 100 acres, with a quit-rent of a half penny sterling per acre, but after 1765 this was reduced⁶ to about £5 sterling per 100 acres,

¹ P. L. B., vii, T. P. to Hamilton, April 25, 1762.

² Because no court of chancery existed in the province, money due on warrants, if put in the shape of a mortgage, could be more readily recovered by suit, as mortgages were a security well known in law, while warrants and surveys were not. *Ibid.*, viii, T. P. to Physick, Sept. 22, 1765.

³ This was true more especially with regard to the region comprised in a large purchase from the Indians in 1768. *Ibid.*, x, T. P. to Tilghman, Feb. 26, 1770.

⁴ Huston, *Original Titles*, etc., p. 105.

⁵ In 1735, because the needs of the proprietors forced them to resort to extraordinary expedients for the raising of money, the scheme of selling lands by a lottery was adopted. It was believed that such a scheme would secure titles at an easy rate to persons who had settled upon lands to which they had no right, and would thereby increase careful cultivation. 100,000 acres were to be laid out anywhere in the province, except in manors or in lands already surveyed or actually settled and improved before 1735, the quit-rent being one shilling sterling per 100 acres. Many tickets in this lottery were sold, which became titles to land in spite of the fact that the subscribers never drew for their lots. The property surveyed in connection with this was for a long time kept separate from the common mass. Indeed, as late as 1770 there were warrants of acceptance for part of these lottery lands on special terms. Smith, *Laws of Pa.*, ii, pp. 149, 150.

⁶ The high rates caused an emigration to other colonies, chiefly Virginia and

with a quit-rent of one penny sterling per acre.¹ What was called surplus land, however, *i. e.*, land which had been found on resurvey to be in excess of the amount intended to be granted and which often had been improved, was sold at considerably higher rates.

Hence the procedure of the land office in issuing warrants and patents may be summed up as follows: First, there was an official, usually the secretary, authorized under restrictions and regulations to issue warrants of survey. Second in order were claims, directions, or other legal causes shown to this officer for the issue of such warrants, and consisting of rights, general or special, substantiated in required forms and recognized by their admission on record. Then came the warrant itself, which was an authoritative order issued under the lesser seal of the province to the surveyor general, and by him transmitted to his deputy, directing him to lay out and survey for the party therein named a certain quantity of land, and to return a certificate of his survey to the secretary's office. The warrants and surveys could be registered, but the settler had no power of assigning a warrant, for no grant had been made to him, but only the promise of a grant when certain conditions mentioned in the warrant had been fulfilled. Moreover the warrants were presumed to hold good only for a brief period, with the understanding that the warrantee was speedily to pay the pur-

the Carolinas, which was accompanied with considerable financial loss to the colony, as the emigrants converted their effects into money and carried it with them. For this reason the proprietors had been making gradual reductions ever since 1751. Penn MSS., *Supp. Proc.*, John Penn to Peters, Sept. 28, 1751.

¹ Since about the middle of the eighteenth century, it had been the practice for the deputy surveyor to be ordered to survey a tract of land; and perhaps several years later a warrant was issued for the return of the survey. Hence, on the plea that it had been surveyed before the new terms were inaugurated land might be bought on the old terms. The practice continued, but the proprietors doubted its expediency even in the case where it guaranteed the possession of the land to persons who had settled and made improvements thereon. P. L. B. viii, T. B. to John Penn., Oct. 28, 1763, July 6, 1765.

chase money and take out his patent.¹ Fourth in order was the certificate so returned, and lastly, the patent or grant. This was a public deed from the proprietors issued under the the great seal and conveying to the grantee their rights in the land, describing its bounds, and giving the complete legal title, but reserving, of course, the usual quit-rent. The granting of the patent was evidence that all the previous requisites had been complied with. When it had been engrossed, the governor signed a warrant, directed to the keeper of the great seal, to affix the great seal, enter the patent on the public records and register his warrant. The proprietors were strict in their orders that no patents should be arbitrarily disregarded or vacated by their officers. As no patent was to be viewed as a private deed, it should furthermore not be cancelled unless this was made a matter of public record, either by some legal order, or by an acknowledgment on its reverse side signed by the parties. At the same time they directed that the greatest care should be observed in granting patents, so that none should be issued for lands already patented.²

Passing now to the consideration of the quit-rents,³ we find that they were collected from the common and manorial lands

¹ P. L. B., vi, T. P. to Peters, Sept. 21, 1759; and to Hamilton, Oct. 18, 1760; ix, T. P. to Physick, Aug. 10, 1768.

² *Ibid.*, iii, T. P. to Peters, July 17, 1752, and Jan. 9, 1753; ix, T. P. to Tillghman, Nov. 7, 1766. The following is a specimen of an early grant: 500 acres (three-fifths of all royal mines, free from all deductions for digging and refining, excepted), with all fishing, fowling, hawking, hunting, mines, minerals, quarries, meadows, pastures, marshes, savannahs, swamps, cripples, woods, underwoods, timber, trees, ways, waters, water-courses, liberties, profits, commodities, hereditaments, advantages, and appurtenances. Rent at one shilling per 100 acres. Penn MSS., *Pa. Land Grants*, 1705.

³ In one of William Penn's earlier wills, written about 1701, it was stated that even his children were to pay quit-rent in some form to him as proprietor. When his sons became proprietors, the private property of each in Pennsylvania was generally held of themselves jointly by some nominal quit-rent. P. L. B., ii, T. P. to Logan, June 16, 1747.

and from lots in Philadelphia.¹ They were so called because the tenant was by their payment "quit and free" from all other feudal services, while they were considered as public in their character² in contradistinction to the other rents.³ Payable annually, they ranged in value from a pepper corn, a red rose, an Indian arrow, a buck's foot, a beaver skin, or a bushel of wheat, to several shillings per hundred acres, according to the period of time, the quality of land and the person to whom the grant was made.⁴ When the conviction became prevalent that an annual render by way of feudal acknowledgment was necessary for the perfection of title, the objections that had been urged

¹ The purpose in granting bank and water lots in Philadelphia was principally to encourage the building of wharves. This was stated in the patents, which were obtained only by special application. On the return of the survey, a patent was issued containing certain stipulations. Among them were first that the quit-rent should be larger than that imposed on ordinary city lots, and secondly, that this quit-rent was to continue for fifty years, at the expiration of which time the property should be duly appraised and one-third of the value paid to the proprietors as a perpetual ground rent. But sometimes the lots were sold outright at so much per foot.—Lewis, *Original Land Titles in Philadelphia*, p. 127. These proprietary thirds, as they were called, were very distasteful to the people. Constant complaint was made and frequent solicitations addressed to the proprietors to know on what terms a release or reversion of them could be obtained. As the reservations were a source of considerable revenue, such requests were generally refused or evaded. *Penn and Logan Corresp.*, i, p. 296; Penn MSS., *Correspondence of the Penn Family*, John to Thomas Penn, March 4, 1734; *Ibid.*, Supp. Proc., T. P. to Peters, March 1, 1745, and July 20, 1759; Penn-Physick MSS., E. Physick to T. P., April 19, 1769.

² *Penn and Logan Corresp.*, i, p. 188.

³ These were ground rents on tracts and lots of land within boroughs and towns, such as York, Carlisle, Easton and Reading, rents from ferries, and temporary rent for squares of ground or pasture.

⁴ Penn had been so desirous of actual settlement that he frequently granted land without purchase money, and with only a quit-rent reserved. Though no actual patent was issued, the settler was considered as the owner. His sons occasionally followed a similar course with settlements on the frontier. All such quit-rent, however, was exceedingly difficult to recover, as the neglect to demand it for many years, the patented lands being first levied upon, caused the people to believe they were not liable for it. P. L. B., ix, T. P. to Tilghman, July 7, 1766.

against its payment were dropped and the assertion made that the quit-rents were intended for the support of government. At any rate they formed a constituent part of the condition of sale, and were expressly mentioned in the patents.

In his description of the province published shortly after the charter, Penn declared that the quit-rent would be one English shilling, or its equivalent, per hundred acres. Those who so desired might buy off the most of it, but as he held of the king by a low rent, so all should hold of him by a low rent paid to secure their title and tenure.¹ In September 1681 he agreed in a special instance to sell the quit-rent for a slight increase in the amount of purchase money, and the annual render of a beaver skin, which was about the value of a crown. But he resolutely refused to abate it entirely, though in the extensive grant to the Free Society of Traders it was nominally fixed at one shilling, and the commissioners of property were allowed an abatement. His sons also expressed a similar unwillingness to dispense with it.²

From the very beginning difficulties arose in the collection of the quit-rents. At first the sheriffs were ordered by both the provincial court³ and Penn himself to "collect, levy and gather all fees, quit-rents, and arrears" due him, and if necessary to distrain for them. They were accountable, of course,

¹ "For £100 down I will sell off the yearly rent of £18, 6 s. 8 d., and will reserve but 50 shillings, which may be reduced as the purchaser pleases, but something must be reserved for the security of the title."—*A Brief Account*, etc. £20, 16 s. 8 d. was the annual value of 5000 acres at a quit rent of one penny per acre. The difference between this amount and £18, 6 s. 8 d., is 50 shillings, the same as the quit-rent of one shilling per one hundred acres imposed upon 5000 acres that had been purchased. These 50 shillings the proprietor was at first willing to sell off gradually, but as a sign of the feudal tenure, he required some quit-rent to be yearly paid, even if it were no more than a red rose.

² Hazard, *Annals of Pa.*, p. 549; *Memoirs, Pa. Hist. Soc.*, i, Pt. i, p. 206; Penn MSS., T. P. to Peters, Oct. 6, 1755; *Ibid.*, *Supp. Proc.*, John Penn to Peters, July 29, 1751.

³ *Pa. Arch.*, 1st Series, i, p. 98.

to the commissioners of property, and after 1689 to the receiver general. But this use of the machinery of government soon fell into abeyance. Whenever it was necessary to proceed to ejectment, or to other forcible measures, the procedure was in accordance with established law. Hence the secretary or receiver general applied to the governor for a writ to the sheriff, who then with as many subordinates as might be requisite aided that official in enforcing the claim at issue. At a comparatively early date the proprietor had appointed deputy receivers in the Lower Counties, and to some extent also in the province; but various causes soon rendered their services almost useless. They were laughed at, refused payment, and even personally maltreated.¹ Indeed, associations were formed expressly to induce the people not to pay their quit-rents. This was especially true when the conflict between the assembly and the proprietors grew more bitter. The Penns were naturally anxious for the payment of the rents due them, and retaliated by issuing frequent orders to their officers to enforce collection, even to the extent of distress and sale.² But in order to guard against sympathetic outbreaks such directions necessarily had to be executed with great caution.³

As the inhabited portion of the province extended, and the subdivisions of land increased, the duties of the receiver general became very arduous. For a while he had personally at-

¹ *Col. Rec.*, i, p. 182.

² P. L. B., x, T. P. to Tilghman, Feb. 26, 1770.

³ "Braddock's defeat and the consequent uneasiness must not put a stop to your demanding our arrears in the town, and by degrees in the country. I desire you will not say anything about it in conversation, as it only raises discontents. We are only taking the same methods any common landlord does, and shall continue to do it till every man pays regularly once a year."—P. L. B., iv, T. P. to Hockley, Sept. 29, 1755. At other times the proprietors displayed considerable leniency in their dealings with people who had suffered from the ravages of war. "Interest and quit-rent are to be forgiven those persons who have suffered during the war." *Ibid.*, vi, T. P. to Peters, Aug. 10, 1759; vii, Dec. 12, 1761; Penn MSS., *Supp. Proc.*, Aug. 14 and Sept. 10, 1762.

tended to the collection of the quit-rents, but at times he had appointed deputy receivers who had performed their duties upon notice sent to the several constables. Therefore in 1756 the proprietors suggested that especially in the frontier counties a deputy receiver in the person of the county clerk, or if necessary an officer in each district where an assessor was chosen, should be appointed and paid by a fixed salary, or by a commission on receipts.¹ They thought there might be one such receiver for every eight or ten townships to collect personally from farm to farm, because, unless the amount of arrears was kept down, many people might object to paying anything at all.² In fact they believed the assessors ought to be empowered to oblige the people to declare the amount of quit-rent that was in arrears.³ But the accounts were in such a state as to make it almost impossible to appoint regular deputy receivers, either at fixed salaries or on commission.⁴

In this connection, it may be said that the failure to provide for a methodical statement of accounts in the rent rolls was another reason for the uncertain and spasmodic collection of this form of revenue. No quit-rent practically was ever paid in the Lower Counties, because no regular rent roll was made up there. Neither, until 1706, did anything like a regular rent roll exist in the province.⁵ The proprietary receivers, moreover, instead of putting the original tract in one column of the rent roll, and in another the several areas into which it had been divided by sale, inheritance, assignment or otherwise, made transfers from one account to another as they received notice of some alienation, and continued transferring and adding parts of other tracts to those already divided, until it was

¹ P. L. B., iv, T. P. to Peters, Jan. 10, 1756; v, to Hockley, Oct. 9, 1756; and to Peters, Sept. 8 and Sept. 30, 1758.

² *Ibid.*, ix, T. P. to Tilghman, Dec. 7, 1768.

³ *Ibid.*, vi, T. P. to Peters and Hockley, Jan. 13, 1759.

⁴ *Ibid.*, viii, T. P. to Physick, July 22, 1765.

⁵ *Fa. Arch.*, 2d Series, vii, p. 65.

scarcely possible to know from what piece of land the subdivisions originally came, its bounds, or to whom it was first granted.¹

Again, it was a constant practice, when lands were sold or divided by the original grantee or by his heirs or assigns, to make no mention of the arrears of quit-rent that had accrued. Official incapacity, together with the confusion existing in the proprietary family, made possible the continuance of this pernicious system. Hence when such lands were transferred, the whole of the arrears was often imposed upon the purchaser without his knowledge. Consequently, when the proprietors issued orders for the enforcement of their rights, considerable hardship might result to innocent persons, who would doubtless never have made the purchase, could they have readily ascertained whether these continuous quit-rent mortgages were yet unpaid.² Moreover, we have observed in the charter that, except in regularly organized manors, persons who bought of a grantee, held of the proprietor and not of the grantee. Therefore, in cases where ownership was divided and subdivided by alienation, the rent paid by the original grantee or his heirs constantly diminished, because no one could be obliged to pay the entire quit-rent on any tract of land as originally purchased, unless the whole belonged to him. If the tract was divided, just as many different accounts must be made up of sums received and receipts given as there were subdivisions. The original grantee or his heirs thus paid quit-rents for such a portion only as remained unsold, and the subsequent owners paid only for their respective shares.

It was not until 1742 that a scheme for the formation of a rent roll was definitely undertaken,³ but for several years very little was done. In 1757 the proprietors suggested that for

¹ P. L. B., vii, T. P. to Physick, Aug. 6, 1761; ix, to Tilghman, May 10, 1766.

² Penn-Physick MSS., i, Benj. Chambers to Wm. Penn, February, 1700.

³ P. L. B., ii, T. P. to Peters, Sept. 17, 1742.

this purpose persons should be appointed in every township to examine the titles of the inhabitants according to the returns in the surveyor general's office, though at the same time they admitted that it was doubtful whether very many would be willing to accept the employment.¹ Also it was not easy to make a rent roll based on the warrant books, for they often gave merely estimates of land granted, and sometimes the exact number of acres surveyed was not returned in the certificate of surveys.² The proprietors then suggested that the plan followed by Lord Baltimore in collecting his quit-rent should be imitated. This was to make a roll in which were entered in one column the tract as originally purchased, the name of the buyer and the quit-rent at the rate usual at the time of the purchase.³ In another column a record was made of subdivisions of original grants, alienations and transfers. This was taken from the books of the land office, and by means of it the original tract was kept entire on the roll, and the several persons who later held subdivisions of it were mentioned as those from whom in each case only a part of the rent was received. Otherwise every purchaser would appear as a tenant, and part of two tracts might be brought into one account under his name. It would soon be impossible then to know under what purchaser, or on what tract as first surveyed, the person paying quit-rent had settled.⁴ Then debt books based on the roll were given to the deputy collectors to facilitate their collection of the rents. But an obstacle presented itself in the shape of certain provisions in an act of assembly passed in 1705, by which the proprietors were obliged to receive quit-rent for part of a tract. This however was true only when a person who had bought a portion of an original tract, either directly of the first grantee

¹ P. L. B., v, T. P. to Chew, Dec. 12, 1757.

² *Ibid.*, ii, T. P. to Lardner, June 8, 1745; x, to Hockley, July 24, 1772.

³ *Ibid.*, v, T. P. to Hockley and Physick, Sept. 9, 1758; vi, to Peters, Aug. 31, 1759.

⁴ *Ibid.*, vi, T. P. to Hockley, July 20, 1759.

or from his heirs or assigns, had presented himself at the land office with his certified deeds, for the purpose of having the transfer of the property entered on record, had paid the fee for the entry, and had his name properly inserted as a tenant in the rent roll. Even then they were not compelled to consider more than one alienation of the original tract, or to receive less than three pence sterling or a peck of wheat, which was the quit-rent on twenty-five acres of land alienated before March 25, 1706, or less than one shilling sterling or a bushel of wheat, the quit-rent on a hundred acres alienated after that time.¹ Hence unless a person by purchase or otherwise from a patentee prior to the date mentioned had twenty-five acres, or subsequent thereto had one hundred acres, he could not oblige the proprietors to receive him as a tenant; but many deputy receivers had accepted small rents on subdivisions of the first alienation of the original patented tract.² Otherwise they were presumed to be ignorant of any such alienations, and could charge the original grantee or his successors for the whole rent reserved. They therefore directed their officers, especially the deputy receivers, to pay no attention to any alienation of property, and to make no inquiries concerning it, but to demand the quit-rent on the original tract, until the person who had made such alienation should request its entry on record.³ It was of course for the interest of the proprietors to keep the tracts as far as possible from subdivision. Hence, as the person for whom any subdivision of the first alienation from the original tract had been made, could not insist that the proprietors should receive him as a tenant, they ordered that the person who represented the original first alienee, or any other parties then in possession of the tract,

¹ P. L. B., vi, T. P. to Peters and Hockley, Jan. 13, 1759; viii, to John Penn, July 6, 1765.

² *Ibid.*

³ *Ibid.*, v, T. P. to Chew, Dec. 12, 1757; vi, to Peters and Hockley, Jan. 13, 1759; vii, to Physick, Aug. 6, 1761.

should be answerable for the rent of such portion, as if it had never been so disposed of.¹ In other words the deputy receivers were to pay no regard to any sub-grants, or receive any rents from sub-tenants. This would hinder the indefinite subdivision of the property, and the consequent diminution of the quit-rents, and would also be a literal compliance with the provisions of the act of 1705.² Finally they suggested, as was the custom in Maryland, that an appropriate name should be given to every tract patented.³ The subdivisions there should be designated as parts of the tract bearing that name, rather than by the names of the individual grantees who changed with every act of transfer or succession. From the land as thus designated, the quit-rent should be demanded,⁴ and when the rolls were made up⁵ the debt books should be prepared and given to those appointed to receive the rent.⁶ Though orders that

¹ P. L. B., vi, T. P. to Peters, Aug. 31, 1759; vii, to Physick, Aug. 6, 1761.

² The proprietors thought that, when a person held a tract on which the quit-rent was less than the sums mentioned in the act, he ought to combine with others similarly situated until the amount could be legally accepted by the receivers. *Ibid.*, v, T. P. to Chew, Dec. 12, 1757; vii, to Physick, Aug. 31, 1763; viii, to John Penn, July 6, 1765.

³ *Ibid.*, ii, T. P. to Lardner, June 8, 1745.

⁴ *Ibid.*, vii, T. P. to Physick, Aug. 6, 1761; ix, to Tilghman, Nov. 7, 1766.

⁵ The rent roll used in Philadelphia County, and which may serve as an example of the one projected for all the counties, was arranged as follows: In the first column was a description of each tract of land as originally purchased, and from which alienations might or might not have been made. In the second was a record of the patent for each tract, and the page of the book on which it was entered. In the third were the names and quantity of the first alienations within the tract, if any had been made. In the fourth were the names of the present possessors, and the amount held by each. Then followed the quit-rents at various rates to one or more of which the tract and its subdivisions were liable. Thus, in the fifth column was the quit-rent at the rate of one shilling per one hundred acres; in the sixth, at a half penny per acre; in the seventh, at a bushel of wheat per hundred acres; in the eighth, at one penny per acre or any other rent; and in the ninth, the total annual quit-rent in sterling. Penn MSS., *Philadelphia Lana Grants*.

⁶ P. L. B., vii, T. P. to Physick, Aug. 31, 1763; x, Juliana Penn to Tilghman, Nov. 28, 1774; and to John Penn, Nov. 30, 1774, and April 5, 1775.

receivers should be appointed and that such a rent roll as has been described should be prepared were frequently issued by the proprietors, they were not obeyed. The reasons for this were the intricate nature of the regulations just described, and the unwillingness of the receiver general to submit to any check on his authority. But from 1770 to the Revolution the proprietary officers found comparatively little difficulty in the collection of the quit-rent.

The fact will be recalled that in the charter power to create manors was given to the proprietor. It remains to be seen how far this was exercised. Twenty thousand acres were bestowed on a body of patentees, which in April 1682 was chartered under the name of the Free Society of Traders in Pennsylvania, and the land which it possessed was erected into the manor of Frank. In its charter were provisions that the corporation should receive all the rents, services, and dues which otherwise would accrue from the land to Penn himself, with the usual manorial jurisdiction and privileges. Three officers of the society also were permitted to sit in the provincial council. Articles of settlement, conditions of subscription, purposes, and methods of trade were soon after published. These included an extensive system of agriculture, the establishment of manufactures, and the carrying on of the whale fisheries. But the Free Society of Traders proved a failure. A manor house was erected on the land of its president,¹ but, so far as appears, nothing further was done to improve or organize the manor, and in 1721 the land of the company was vested by legislative act in certain trustees to be sold for the payment of its debts.²

By way of illustration, the language of another manorial grant made in 1685 may be cited: "Eneas MacPherson of Scotland is given 5000 acres with all the customary privileges in free and common socage as of the seigniorie of Windsor,

¹ In 1684 he summoned by writ all justices and "lords of manors" to attend a session of the provincial court at Newcastle. *Col. Rec.*, i, p. 139.

² *Votes of Assembly*, ii, p. 290.

with powers to erect the same by these presents into the barony of Inversie. The said Eneas MacPherson may hold court baron, view of frank pledge, and court leet by himself or stewards. The quit-rent is one shilling per one hundred acres in lieu of all services and demands, without molestation of the proprietor, his heirs, and successors."¹ Again in 1701 the proprietor granted fifty acres within his own manor of Pennsbury to Martin Zeal, the same to be held of the manor and to be subject to the regulations of its courts when constituted. About the same time he directed the commissioners of property during his absence, to erect manors whenever possible; but the order was not obeyed.² This shows that at that time Penn still cherished the plan of erecting manors³ within the province. The difficulties with which he was beset may have prevented it; but had manorial courts been established in the province,⁴ the experience of other colonies proves that they

¹ Penn MSS., *Pa. Land Grants*.

² Smith, *Laws of Pa.*, ii, p. 142.

³ He had attempted the previous year to have a law passed for the erection of courts baron, but the effort failed. *Col. Rec.*, i, p. 607.

⁴ In 1688 the Welsh settlers refused to consider themselves included within the counties of Philadelphia or Chester, and therefore would not consent to bear any portion of the taxes, serve in office, or perform jury duty. They claimed to be a distinct barony, and sent a petition to the commissioners of property stating that the proprietor had promised them 40,000 acres of land regularly laid out as a manor, and that they should not be obliged to answer in any provincial court, but should have courts and magistrates of their own. In accordance with the terms of this grant they asserted that he had issued a warrant for surveying the tract, March 13, 1684. Penn MSS., *Autograph Petitions*. They also protested against being summoned to the county courts of Philadelphia or Chester, lest they should be assessed in both counties, and called for a confirmation of their rights. It appears, however, that they were not numerous enough to occupy the whole of the barony. Therefore the governor and council declared that several baronies might lie within the same county, and that the Welsh were included within the bounds of Chester county. Inasmuch as they had refused to pay the interest and quit-rent from the date of the warrant, their plea to be regarded as a manor was denied. The fact that they possessed a manor could not be proved from the minutes of the commissioners, and therefore the unsettled part of the tract was granted to other purchasers. *Col. Rec.*, i, pp. 265-6; *Pa. Arch.*, 1st Series, i, p. 108.

would have possessed little vitality, while in Pennsylvania the spirit of the people was particularly opposed to the institution.¹

Hence in the full and strict sense of the term there were no manors in Pennsylvania, whatever the proprietary tenths and other large surveys may have been denominated. Though the tenure expressed in the patents was nominally "as of the manor or reputed manor of ———," or, "as of the seignior of Windsor in free and common socage, by fealty only," yet really it only implied rent service.² Often the lands granted within a county were held as of the principal manor of that county, whether the particular tract was actually within the surveyed limits of the manor or not.³ So far as the proprietary manors⁴ were concerned, the people settled in such large numbers that whenever the Penns secured a new grant of land from the Indians, the surveyors for many years were not accustomed to survey an amount equal to the tenth part which should have been set aside for manorial purposes. In some cases the proprietors had to content themselves with land which had been avoided by the settlers because of its worthlessness. But in order to prevent any vacant land which lay between former surveys and was accidentally discovered from being surveyed for themselves, the proprietors directed that such land should be granted to the discoverer at reduced rates. Moreover any reservation of land other than that directly sur-

¹ The manorial idea, however, had not disappeared as late as 1750, for about that time Count Zinzendorff applied for a large section of country, which application the proprietors refused because special powers and privileges were desired. In order therefore that the people might be responsible only to the regular magistrates, nothing that would permit a separation from the rest of the inhabitants should be done. Penn MSS., *Supp. Proc.*, Thos. Penn to Peters, May 13, 1750.

² Smith, *Laws of Pa.*, ii, p. 142; Huston, *Original Titles*, etc., p. 80, *et seq.* Penn. MSS., Pa., Land Grants.

³ *Ibid.*, Patents in the land office at Harrisburg.

⁴ In 1756 the proprietors suggested that the principal tenant in each manor should be given the general powers of a bailiff over the other tenants, but the suggestion appears to have been unheeded. P. L. B., iv, T. P. to Peters, Jan. 10, 1756.

veyed for manors was distinctly forbidden.¹ For land in these manors, which was generally of a superior quality, the proprietors issued what were called "warrants to agree," in which a price was fixed based on the report of the deputy surveyors concerning the worth of the tract in question.² But they usually preferred to lease rather than to sell any portion of these reservations,³ though in 1764 option in the matter was given to Gov. John Penn.⁴

As an institution the manor is closely connected with the township. It had been part of Penn's plan to have the inhabitants settle in villages or townships, dividing 5,000 acres among ten or more families, according to their ability to cultivate such an area.⁵ Hence, in order that the tracts bought by large purchasers might lie compactly together, he introduced into his warrants the clause, "according to the method of townships appointed by me." But, owing to the very nature of early settlements, this plan could not long be pursued. In order to oblige the people to settle more compactly and to check the growth of speculation in land,⁶ a similar plan was broached in 1766. Orders to this effect were frequently sent to the land officers, but the collusion of the deputy surveyors with the land speculators defeated their execution.⁷ Yet the lands in the central and western parts of the province were usually settled according to a system of townships similar to that of New England.

Considering now a common usage of the land office known as the "law of improvements," we find that a title by improve-

¹ P. L. B., ix, T. P. to Tilghman, Nov. 7, 1766.

² Huston, *Original Titles*, etc., p. 196.

³ P. L. B., iv, T. P. to Peters, Feb. 21, 1755.

⁴ *Ibid.*, viii, T. P. to John Penn, July 13, 1764.

⁵ *Mem. Pa. Hist. Soc.*, i, Pt. II, p. 418.

⁶ P. L. B., viii, T. P. to Smith, Apr. 1, 1766.

⁷ *Ibid.*, ix, T. P. to Tilghman, July 7, 1766, Aug. 5, 1767; to John Penn, May 9, 1769.

ment was a right acquired by one who had built, cleared, and resided on land not sold or appropriated by the proprietors. Improvers were thus presumed to be persons who had inadvertently settled on lands to which they had no real titles, but who were not disturbed except in special instances. In the case of conflicting rights also, it was the custom to give the preference to the improver. Improvements without warrants did not form a part of the system of William Penn, nor did he intend to allow any other kind of title than that of legal purchase from himself. But through the acquiescence of the land officers and even of the proprietors themselves,¹ the practice of making allowance for improvements grew up from a very early period. But when squatters became numerous² the proprietors began to express the opposite opinion. In 1738 they issued a proclamation stating that many persons had obtained from the commissioners of property warrants for land on the agreement that they would pay within a specified time both the price demanded and the quit-rent, or forfeit their rights. A large number of these persons had possessed themselves of land without complying with the conditions, and others without permission had entered upon lands and transferred to third parties various claims under the name of improvements. It was therefore declared that such persons would be prosecuted, and the lands granted to others, if the regulations were not obeyed.³ But, though the proprietors endeavored to discourage the practice, it is evident that they soon realized the necessity of concession, for they allowed under certain circumstances a species of title known as inchoate to be developed in the following manner. By settlement and improve-

¹ Indeed, so far as it lay in their power, the proprietors never increased the price of land, so as to affect unfavorably any person who had already settled and made suitable improvements. But such a person could take advantage of a fall in price. P. L. B., iii, T. P. to Hamilton, Sept. 26, 1751; vii, to Peters, Dec. 12, 1761.

² *Ibid.*, T. P. to Tilghman, May 10, 1766.

³ Huston, *Original Titles*, etc., p. 283.

ment a right of pre-emption was established. When the lands were so settled and improved, the occupant would apply for a warrant for a certain amount including his improvements. On payment of two-thirds of the purchase money, a warrant was made out by the secretary and signed by the governor. This being recorded in the surveyor general's office, a copy was sent to the deputy surveyor with an order to make the survey. Then a draft was returned into the surveyor general's office, and as usual a certificate entered with the secretary. Upon payment of the remainder with interest and arrears of quit-rent, the patent was issued. Absolute title, however, was not regarded as secured till the patent was delivered.¹

This general description of the procedure of the land office, may well conclude with a notice of its attitude toward the settlement of the frontier. About 1718 the immigration of Scotch, Irish and Germans became very brisk, and from that time the frontiers of the province were pushed steadily westward. Conflicts were brought about with the Indians, because many of the immigrants appropriated their lands. By 1726 it was estimated that 100,000 persons had settled without a shadow of right.² Many of them made their way to the disputed region near Maryland, where no lands could honestly be sold. Still more beset the commissioners of property with queries as to where they should locate themselves, declaring that Penn "had invited the people to settle his country."³ They pretended to buy but had no money, and even had the disposition to pay

¹ *Col. Rec.*, ix, p. 380.

² Some located themselves on reserved and manor lands, expecting to have them on lease. Indeed, in 1751, a petition was sent to the king by a number of these people, complaining that the proprietary officers had burned their houses and otherwise injured their property. The Privy Council resolved that the complainants should be referred to the courts of Pennsylvania. Penn MSS., T. P. to Peters, July 8, 1752.

³ Penn MSS., *Offic. Corresp.*, i, J. Logan to Mrs. Penn, Feb. 1, 1726; *Pa. Arch.*, 2d Series, vii, p. 96.

for the land they had seized been shown, they were often in doubt where to apply. Hence many took advantage of the uncertainty and paid no attention to the proprietary officers, because they could grant no more lands than would repay Penn's mortgage of the province in 1708.¹ The confusion was heightened by the report that the contestants in the proprietary family intended to divide the province into shares, for if that were done the general interest in the enterprise was sure to decline. This was later denied by the Penns, who at the same time urged that an agreement should be reached with the newcomers by giving them grants of some kind rather than allowing them to settle without any.² But the commissioners were unable to prevent encroachments on the land of the Indians, and of this as well as of other abuses connected with the settlements complaints were constantly made. In consequence of these troubles the Penns were frequently besought to come over, and place their landed interests on a firm basis.³ In 1730 the Penns stated that the people who at the suggestion of the commissioners had settled on any lands, could have them at the price for which they were sold at the time of settlement, plus the interest since the time of purchase, and minus the value of their improvements. Those who could not do this should be obliged to pay a quit-rent proportional to the purchase money. But the squatters stubbornly held their ground, regardless of attempts at ejectment.⁴ Then the secretary was instructed to allow settlers to pay only the interest, but no titles were to be given to them. Such as had paid interest, however, could not be ejected⁵ without a bill in

¹ *Pa. Arch.*, 2d Series, vii, p. 96.

² *Ibid.*, p. 131.

³ Penn MSS., *Offic. Corresp.*, ii, J. Logan to J. Steel, Nov. 18, 1729.

⁴ P. L. B., i, John and Thomas Penn to J. Logan, April, 1730.

⁵ "With respect to the people, either in large or small bodies, intruding on our property, it is what we cannot avoid, and our only remedy is to defend ourselves in courts of justice." P. L. B., x, T. P. to Hockley, June 16, 1774.

chancery, though those who had not done so might be removed without legal process.¹

During the Indian wars it was often necessary for the accommodation of the armies on the line of march, that settlements in the wilderness should be encouraged, and persons who would thus settle were given the preference in event of the sale of the land. As a means of defense for the frontiers, and as military stations, towns were therefore established. Some of their soil was granted by warrant on moderate terms, but still more was appropriated without show of right. Furthermore, as an inducement to protect the frontier, Gov. Morris in 1755 offered to grant lands west of the Alleghanies free of purchase money, and with exemption from quit-rent for fifteen years. Such of these lands as should be settled within three years after the removal of the French were to be patented without fees, except those paid for surveying. This offer was extended to all persons in Pennsylvania or the neighboring provinces who would join an expedition for the expulsion of the French. The proprietors as a rule were opposed to the formation of such remote settlements, because they were so far from the seat of government as to be almost independent; while they excluded the Indians from a fine region for hunting before the advance of settlers had made that course of action necessary. Neither did they approve of the governor's offering land without fees; but knowing that the country at that time was in the throes of a merciless war, and that the need of aid was imperative, they conferred with the English ministers as to the way in which to make it most effective. The result was that after a time they confirmed in part Morris' proposition. Under the pressure of circumstances they had at first intended to grant the territory in question free from all demands, except the fees of the surveyor and secretary. But when they saw that the chances of securing any quit-rent from the class of people who would settle there were very small, and that,

¹ Penn MSS., *Supp. Proc.*, T. P. to Peters, May 4, 1743.

if they agreed to forego the legal right of demanding it, they would be guilty of an inconsistency which might militate against its collection in more favorable localities, they directed Morris to grant the land at the usual quit-rent of a half-penny per acre, or even at a farthing per acre, if no more could be obtained. The payment of this rent, however, was not to commence till March 1786. The governor was also ordered to provide strict regulations for preventing the evasion by the people of the conditions on which the grant should be made. In other words they must actually settle the land and not dispose of it to land speculators.¹ On these terms the offer of what was known as the "campaign land" was made. The offer was not accepted, because the mere holding of land would not result in the formation of compact settlements, or oblige the settlers to observe military discipline.

¹ *Votes*, iv, p. 418; Penn MSS., T. P. to Peters, July 3, Oct. 4, Oct. 25, and to Morris, Oct. 6, 1755. P. I., B., iii, to Morris, Oct. 4, 1755.

CHAPTER III

HISTORY OF THE LAND SYSTEM

HAVING in the preceding chapter outlined the system of territorial administration, it is proposed now to sketch somewhat briefly its history, until the land office was established in what might be called a more modern form, and with particular reference to the several attempts of the assembly to regulate it. In this connection it may be said that the proprietors were generally careful to distinguish between their public and private territorial rights. They were willing that the legislature should enact, alter, or repeal laws for the recording of deeds, the transfers of land from one individual to another and the like, but with the aid of the crown they resisted all attempts to interfere with the terms or conditions upon which they were willing to dispose of their property.¹

In May, 1700, Penn offered to the council a bill for the "confirmation of freeholds and surveys," but that body saw "no service in it at that time."² Owing to his superabundance of good nature, or to a feeling that only a liberal concession on his part would meet with a favorable response from the assembly, he agreed at its session at Newcastle to pass a law entitled, "An act for the effectual establishment and confirmation of the freeholders." On account of past neglect and errors both of officers and people, which had injured the proprietor and made the inhabitants insecure, it was provided in

¹ In 1701, Penn asserted that he would never permit an assembly to intermeddle with his property, lest such an act should be drawn into a precedent. *Col. Rec.*, ii, p. 40.

² *Ibid.*, i, pp. 607, 610.

this act that all lands duly settled by virtue of warrants or patents obtained from the governors of New York prior to 1681 should be quietly enjoyed; that the possession of land held under warrants issued by authority of the proprietor or of his commissioners of property should be confirmed; and that, even if no patent had actually been granted, yet if peaceable entry and possession had been obtained by warrants or otherwise and had continued for seven years, it should give ample title. It was also enacted that all patents should be issued under the great seal, and should give the grantees an absolute title to the lands therein mentioned to be granted or confirmed, whether they were more or less than the number of acres really surveyed, neither should they be subject to further survey, and all tracts already granted should be confirmed. But the proprietor by his surveyors might within two years thereafter resurvey any person's land. If upon such resurvey, allowing four acres in the hundred, over or under, for the difference of surveys, and six acres in the hundred for roads, barrens, uneven ground and the like, there should be found more land than the amount for which the tract so surveyed had been originally laid out, then the proprietor was to have all such surplus land, while the present possessor should have the refusal of it, if he wished to buy. In event of failure to agree as to the terms of sale, the respective claimants should each choose two persons to fix the price, or to determine where the surplus should be taken off; and the proprietor was to make good, upon resurvey, all deficiencies that might be found, with the allowances aforesaid, and with the reservation of the possessor's improvements. In cases where after several alienations of the property had been made under the notion that the words originally in the deed of purchase or sale expressed the correct number of acres, and where on a resurvey a surplus had been found to consist of one plantation or parts of several, then the proprietor's surplus should be taken off

the uncultivated residue undisposed of, otherwise off each plantation proportionately. But no surveyor should be allowed under a heavy penalty to enter upon any person's land to make a resurvey, without due notice to the owner, and in case any surveyor wilfully or negligently surveyed to the prejudice of the owner, he should give twofold compensation for the damage done. The first hundred purchasers from Penn, if they made speedy application therefor, were to have the liberty of determining the location of their property. But in cases of co-partnership, where one party died before a division had been made, his heirs or assigns could claim their just proportion. Lastly, it was declared that the clause in the charter of privileges of 1683, concerning the confirmation of lands and the reservation of such rents and services as were or ought to be customarily reserved to the proprietor, should be in full force in spite of the fact that the charter had ceased legally to exist.¹

Not satisfied with the provisions of this law, and induced by a petition from the inhabitants of Philadelphia,² in September 1701 the assembly desired that in case of absence the proprietor should be represented by persons fully empowered to grant and confirm lands, as well as to make satisfaction in case of error; that there should be no delays and only lawful fees should be allowed;³ and that an instrument should be granted to amply secure the people in their property. The request was also made that no matter concerning property should be laid before the governor and council; that rents should be discontinued

¹ Bradford, *Laws of Pa.*

² *Collections Pa. Hist. Soc.*, i, no. 4, pp. 275-6.

³ A short time after his return to the province in 1699, Penn had been requested to establish a land office with definite rules of procedure, for granting and confirming lands, for the want of which office many had been unwilling to pay their rents. It was declared also that, had such an office been established before, it would have promoted the settling of the province. More careful surveyors and surveys, as well as more efficient land officers generally, were therefore demanded. Penn-Physick MSS., i, Benj. Chambers to W. P., Feb., 1700.

and reservations withdrawn from the land on which Philadelphia stood, as well as that of the liberties; that the original allowance of ten acres in the hundred according to the law above cited should be granted in all cases whatsoever, and that this law should be inserted, with suitable amendments, in a proposed charter. Several other demands were also made, affecting mainly the preservation of deeds and the granting of certain privileges in the Lower Counties.¹ Penn in his reply protested that several of the articles did not concern a house of representatives which was convened on affairs of government. He believed that disputes about unconfirmed property rights ought to lie before him. He denied the right of the assembly to interfere in the agreement between him and the first purchasers concerning Philadelphia, and complained because of its attempt to prevent him from raising his rents and prices in proportion to the advantage which time gave to the property of others, especially as he was under so great expense in his controversy with Lord Baltimore.* After acquiescing with some remonstrance in several of the particulars he expressed his willingness to grant the allowance demanded, but only for the ends proposed by law.³ The assembly insisted strenuously that all misunderstandings should be removed, and the allowance granted on all lands whatsoever, whether occupied or to be occupied by purchasers or tenants. In answer Penn stated that, as a rule, he had never intended to make up for deficiencies. But understanding that the people regarded the law as unfair, because when there was a surplus of surveyed land an allowance of ten acres per hundred was made, but when the supply became exhausted only two acres were allowed, he expressed his willing-

¹ *Col. Rec.*, ii, pp. 37-39.

² It was agreed that the proprietor's expense for the preservation of the Lower Counties should be considered a public charge, and should be defrayed from the "£2000 free-will offering money," 1684. *Ibid*, i, pp. 117-118.

³ *Ibid.*, ii, pp. 39-43.

ness to make a concession of six acres per hundred to all persons upon resurveying. But the assembly refused to accept his offer. At his own home he then expostulated personally with its members, chiding them for their failure in duty not only to him but to themselves and their constituents in that they did not make a proper use of the opportunities which he had given them for their betterment. He advised them not to reject his proposition, and for the purpose of coming to a decision persuaded them to hold a session in his private parlor. Then they sent him an unsigned paper stating that they still refused to accede to his offer, because several of their number had returned home believing that ten acres per hundred would be allowed to all persons concerned.¹ Both parties, however, remained obdurate.

A short time after David Lloyd, the leader of the assembly, prepared a charter of property, which was to settle in the nature of a corporation whatever related to the proprietor's governmental as well as territorial powers. Being urged to sign it Penn acquiesced with some reluctance, and directed the secretary to affix the great seal to it unless within six months he should send an order to the contrary. Within the specified time after his return to England,² he did send such an order to Gov. Andrew Hamilton.³ This aroused so much wrath that

¹ *Col. Rec.*, ii, pp. 54-55.

² At his departure from the province, in the latter part of 1701, he empowered the commissioners of property to sell all concealed or vacant lands, to issue patents, to appoint proprietary officers, to grant lands on whatever terms might appear advisable, to dispose of surplus land, and after careful resurveys, to make satisfaction according to law for all deficiencies, wherever they occurred. Huston, *Original Titles*, etc., p. 80 *et seq.* These concealed lands were a source of considerable complaint and of charges of fraud against the proprietors. Reed, *Explanation of the City and Liberties*. They were simply small tracts lying between various surveys of the same piece of property, and whose existence for any reason the proprietary officers chose to conceal until a favorable opportunity to dispose of them presented itself.

³ *Col. Rec.*, ii, pp. 62, 325; *Pa. Arch.*, 1st series, i, p. 148.

in August 1704 the assembly connived at sending him an address accusing him of hypocrisy, want of faith and a variety of other serious faults. It was drawn principally by Lloyd and despatched to the proprietor indirectly, so that others might learn of his consummate wickedness.¹ But the next assembly, and the people in general, rather deprecated this exhibition of temper. Furthermore, on account of this refusal of the proprietor to confirm Lloyd's charter of property, and of the repeal of the act of 1700 by the queen in council February 7, 1705, the commissioners of property had great trouble in recovering surplus land. In fact, it was exultingly said that Penn was now cut off from all redress, if any injury should be done him. On his part he approved the forfeiture of land for failure of payment, and other stringent measures which the commissioners deemed wise to adopt.² Three years later the assembly in an address to Gov. Gookin, took as the basis of a representation against a proprietary officer the petition of a number of persons who claimed to be aggrieved because their old patents had been fraudulently obtained from them by the proprietor or his agents. It took exception also to the supposed exactions of that officer, and the existence of two receivers general, the one appointed by Gookin, and the other by Penn.³

In 1712 the assembly, taking advantage of the fact that Penn was overwhelmed with financial difficulties, passed a law called "An act confirming patents and grants." By this act it was provided that the law should not be so construed

¹ It may be said that in 1699, on account of a burdensome debt to his dishonest steward, Penn had the expectation of raising a considerable sum in Pennsylvania. As this was not forthcoming, he was at first very severe in his exactions, and thereby forfeited the affection of many staunch admirers. The next year however, he made ample amends, but unfortunately at his departure left behind an adverse faction. Penn MSS., *Offic. Corresp.*, ii, J. Logan to the proprietors, Nov. 14, 1731.

² *Fenn and Logan Corresp.*, ii, pp. 72, 304.

³ *Votes*, ii, pp. 33, 141.

as to confirm the possession of any land taken up by virtue of early grants from the governor of New York, and not duly settled or improved by the grantee or his assigns prior to 1682. Neither should it give any right to a claimant or possessor of lands that had not been taken up or surveyed by virtue of a warrant or order from the commissioners of property. So far as grants and patents were concerned, the proprietor or his officer, upon reasonable demands therefor, should make all such grants, patents, and assurances according to the laws of the province, as would insure absolute title to all lands previously sold or thereafter to be sold, for such "estate, terms, lives, years, uses, and under such rents, or acknowledgments," as might be agreed upon. A grant or patent from the proprietor, sealed and entered in the rolls office, was to be good in law, and should not require delivery before witnesses, livery and seisin, or such acknowledgments as were necessary for the validity of private deeds. Persons holding claims to unlocated lands by settlement, improvement or otherwise were protected by a clause which stated that a prospective purchaser of the territory might have the next most advantageous place. But the clause was not to make valid any patent that had been vacated by due process of law. Where any prior right appeared, however, the proprietor should refund to the purchaser the sum received with interest. Finally, no grants or patents should be considered defective or prejudicial¹ to the rights of the grantee by reason of any misnaming, mis-

¹ In 1683 a petition concerning the confirmation of patents was sent from the Lower Counties. Penn answered that the people were at fault, because they had not made any efforts properly to secure their patents, after express orders for that purpose had been issued. This was no reason, he thought, for giving them a pretense to avoid paying quit rents. With other landlords, he believed such a course of conduct would weaken their titles or "pinch their pockets." *Col. Rec.*, i, p. 86. The following year, however, he sent from England a number of blank forms, which were to be drawn up into an instrument for confirming patents. The president of the council was to affix the great seal to the document, but through his neglect it was not sealed. Hence in 1689 it was cancelled. *Ibid.*, ii, p. 231.

recital, or non-recital of the lands supposed to be purchased, or of their location, or because of any want of form, or of entry on record, or of sealing with the great seal, or for any failure to ascertain the proprietor's own title, but all such grants should be available in law against the proprietor, and should be adjudged most beneficially to the grantee.¹ The act was repealed² by the queen in council, February 20, 1713, but the custom of resurveying as provided for in this and in the preceding act was established and continued.³ Several years later, in 1719, the assembly endeavored to pass an act providing for the survey and confirmation of lands sold by the proprietor and not yet patented, as well as for the confirmation of all old patents and grants. A bill for this purpose however failed to secure the necessary majority.⁴

For nearly forty years the assembly refrained from attempts to encroach on the control of the land office by the proprietor. But in an address to Gov. Morris, in 1755, it declared that the state and management of the land office were "pretty much of

¹ Bradford, *Laws of Pa.*

² The reasons for repealing it, as given by the attorney-general, seem based on the idea of supposed injustice to the grantees, rather than on any desire to protect the rights of the proprietor. This was in keeping however with the jealousy cherished by the home government against the proprietary provinces. He suggested its repeal to the Board of Trade, because it confirmed the titles to lands bestowed by old grants before William Penn was given the government, as well as to new grants made since that time which had not been duly seated and improved by the grantees before 1682. If Penn had bestowed these lands since the grant prior to 1682, the prior grant would be set aside. Again he found fault with the proviso that the proprietor was not to make good a right to unlocated lands to a purchaser who through inadvertency or misinformation, had obtained a patent for lands to which a prior right existed, to any further extent than could be done by the bestowment of the same quantity of land in the next most advantageous place which such purchaser might choose, after ascertaining that it was vacant and free from other claims. He thought this was unreasonable, because if no such place was found the purchaser would have no satisfaction for his purchase. *Pa. Arch.*, 1st Series, i, p. 159.

³ Penn. MSS., *Pa. Land Grants*; P. L. B., vii, T. P. to Peters, Feb. 13, 1762.

⁴ *Votes*, ii, p. 256.

a mystery.”¹ Therefore in 1759 it passed a law entitled “An act for recording warrants and surveys.” This provided for the establishment at Philadelphia of an office, at the head of which should be a recorder, who was bound under a penalty of £20 to register all warrants, surveys and other documents relating to land. These papers were to be as valid in law as documents issued by the secretary or surveyor general, and copies certified by the recorder as valid as the originals. The recorder was also given the right to demand and recover all warrants, surveys, charts, maps, draughts, and other records of land granted by the proprietors, or made and signed by the surveyor general or his deputies, which were, or ought to have been, returned and lodged in the office of either the secretary, or the surveyor-general, and which might be useful as a means of proof to parties claiming rights to land. In case any documents could not be delivered, and it could be proved to the satisfaction of a jury that they had been burned or otherwise destroyed with the consent of a proprietary officer at any time after the passage of the act, then the recorder might recover to the use of the party aggrieved damages to the extent of double the value of the land. But the costs of the suit, if brought for the benefit of the public, were to be paid out of the public treasury. Moreover, as many of the warrants, surveys, and “other writings” made in pursuance of purchases and contracts with the proprietors had been deposited in the surveyor-general’s office as loose slips of paper, and had not been duly recorded, and as the secretary and surveyor-general were not under legal obligation to preserve them, by reason of which many papers had been lost or mislaid, the recorder with his clerks and deputies, was to have free access to all such “writings,” and any papers relating to them. The secretary and surveyor general also were commanded to deliver up the papers in their charge, under a penalty of £500 for every paper retained, concealed, or neglected to be given. When

¹ *Votes*, iv, p. 464.

they had been carefully numbered and set down in an inventory, they should be taken in small parcels to be recorded as speedily as might be, either by their being transcribed in the offices of the secretary and surveyor-general, or, after removal, in the recorder's office, according as he should think fit. But in the latter case he should give receipts for the documents as denoted in the inventory. As soon as they had been recorded they should be returned to the proper office, under a penalty of £1,000.

Again, every warrant issued by the proprietary officers should be sent by the secretary to the recorder's office to be recorded before the land was surveyed or located, and the surveyor-general, or the deputy to whom the warrant was directed, within forty days after the request of the warrantee should make a survey according to the warrant, or forfeit £50. Whenever the tract had been properly surveyed and his fees paid, he should deliver a copy of the survey to the warrantee, and make a return with a map and other specifications into the surveyor-general's office under a penalty of £50. The surveyor-general on his part was to examine and correct them, and within twenty days send them to the recorder, also under a penalty of £50. John Hughes, an inveterate enemy of the proprietors, was appointed recorder, but in case of his inability to discharge the duties of the office, the act further directed that the provincial court should supply his place, until the assembly could appoint a successor. For the proper performance of his duties, however, he was directed to take an oath and to give bond for £1000, while the fees which he was entitled to receive for recording warrants, surveys, minutes of property, and "other writings" were specified.

The words of the act implied that a warrant and the return of the survey based on it constituted a complete title to an estate of inheritance in land. The proof of this appears in the declaration already mentioned, that land could be claimed and held under warrants, surveys, and "other writings." By the

general term "other writings," patents were evidently meant, though in reality these were the only legal conveyance of an estate from the proprietors to any grantee.¹ But in a message to the governor, the assembly asserted that a right to a piece of property was vested from the moment the warrant was issued. It stated also that with regard to matters of property the Penns should be considered as private individuals, and that since they were the landlords of whom the people held real estate, their interest was necessarily opposed to the popular welfare. It urged that many of the securities and evidences of the people's rights had been lost or destroyed, and that their lands had consequently been resold. The proposed act was therefore intended to secure the evidence and vouchers of their rights, which it did not appear safe to trust in the hands of proprietary officials. Thereby the laying of impositions by those officers on orphans, minors and persons beyond the sea would be prevented.²

When the act was laid before the Board of Trade, the opinion which that body expressed, was that it would establish a title to estates different from that which existed by common law. But this it thought would be unjust to the proprietors, since it seldom happened that, upon issuing a warrant of survey, the whole of the purchase money was paid down, and leniency in this matter was necessary in order that the purchaser might be left with sufficient to cultivate the lands. It is evident that, if the mere warrant and survey conveyed a right not simply conditional but fully available in law, the proprietors would have no remedy against the grantees by ejectment, and the persons holding title might alienate it, so that the proprietary title would cease with the absence of the person to whom the grant was originally made. The Board pointed out

¹ "The doctrine of the validity of a warrant and survey without a deed of purchase or a patent is not good in law, though possibly a warrant and survey on an 'old right' makes an equitable title." P. L. B., vi, T. P. to Peters, Jan. 12, 1760.

² *Votes*, v, pp. 66-67.

that this would cause the proprietors to grant no warrants till all the purchase money was paid in, which if rigidly observed would prove very disastrous to the province. On account of this and other objections it recommended to the Privy Council that the act be repealed, though it suggested the founding of an office of record.¹ But in spite of the repeal it was still the intention of the assembly to pass another act of a similar tenor. The proprietors acknowledged that many people in England looked upon the management of the land office as a secret "unfathomable as the Inquisition,"² but they directed Gov. Hamilton not to assent to any such act until it had received their approval, because "it was a matter concerning their private property, and such as they had a right to consider."³ The assembly did not offer the bill, since the proprietors had ordered the secretary's office to be made more public, and that any person should have the right to demand copies of papers necessary to substantiate legitimate claims.⁴ In 1765, they also directed their officers to discontinue the practice of opening and closing the land office at pleasure, for while "that might be done in a private gentleman's affairs, it was not proper for the proprietors of a province."⁵

It had been enacted by 7-8 William III, chap. 22, that no proprietor, without the king's license issued in council for that purpose, should sell or otherwise dispose of land to any but natural-born subjects of England. Still the practice of selling land to aliens continued to be very common in Pennsylvania. Moreover, land upon which no payments had been made was subject to forfeiture, and the property of intestate aliens legally escheated to the proprietor. One clause in the Newcastle law of property, however, provided that the property of

¹ *Col. Rec.*, viii, pp. 539-540.

² Penn. MSS., T. P. to Peters, Nov. 15, 1760.

³ P. L. B., vii, T. P. to Hamilton, March 6, 1762.

⁴ *Ibid.*, vi, T. P. to Hamilton, Nov. 15, 1760.

⁵ *Ibid.*, T. P. to John Penn, Sept. 14, 1765.

every unnaturalized alien, whether testate or intestate, should regularly descend to his heirs as if he had been naturalized. But in 1706 the law was repealed, because, among other reasons, this clause was repugnant to the statute just mentioned. Another law, passed in 1705, provided that only in case an intestate had no kindred, should his real estate escheat to the immediate landlord of whom it was held, whether he was the proprietor, or merely the lord of a manor. Personal property however, was regularly to go to the proprietor alone.¹ This law also was repealed simultaneously with its predecessor. Thereupon, in 1708, many foreigners in the province, having been informed that their lands would escheat to the proprietor, were uneasy for want of assurance as to the validity of their titles.² But many of them were speedily naturalized by the legislature and the uneasiness ceased. But the question was revived in the act passed by the assembly in 1759, entitled, "An act for the relief of the heirs devisees, and assigns of aliens." It was declared void, however, by the king in council, because it deprived the proprietors of the right of escheat, and vested the lands in descendants of aliens precisely as it did in those of natural born subjects.³

It is true that Gov. Thomas in 1743 had been empowered to grant escheated land.⁴ About the same time the secretary was ordered to allow persons who gave notice of estates liable to escheat to have the preference in the ensuing sale, and, when the price had been fixed a proportionate deduction was to be made as an encouragement to such applications.⁵ But no complaints had arisen that such a power had been exercised. The custom therefore was on the proper request, to make out a new grant to such heirs or devisees, conformably with the

¹ Bradford, *Laws of Pa.*

² *Penn and Logan Corresp.*, ii, p. 278.

³ *Col. Rec.*, viii, pp. 545-6.

⁴ P. L. B., ii, T. P. to Thomas, Aug. 21, 1743.

⁵ *Ibid.*, T. P. to Peters, Feb. 25, and Aug. 22, 1743.

nature of the inheritance or the purpose of the devisee, without imposing any fine or drawing lucrative advantage of any kind from the transaction.¹ But in 1765 the proprietors directed the secretary to proceed by escheat against the estate of a certain intestate decedent. Thereupon the receiver-general applied to them for a grant of the property. They expressed their willingness to comply with the request, and asked the opinion of the provincial attorney-general thereon. He must have believed it impracticable, for nothing further appears to have been done.²

Taking up now the history of legislative action regarding the quit-rents, the assembly in the memorable address of 1701 requested that the possessors of land might have the liberty of buying up their quit-rents, as Penn had formerly promised. He replied that if it should be his lot to lose his means of support he must depend on his rents, and therefore would not readily part with them. Many years also had elapsed since he made such an offer, and it had not been accepted. The assembly, however, alleged that originally an agreement had been made that the quit-rents should be paid to him on account of the great expense he would be at in the administration of government; and that he had sold lands for large sums, and had reserved sufficient to maintain himself or his deputy governor in a manner befitting their station.³ Again, in an address to Gov. Evans, May 21, 1705, it asserted that the quit-rent was designed solely for the support of government; that it was a contract between Penn and the purchasers, and that the people viewed it as a tax paid in consideration of a speedy confirmation of their lands. The governor replied that no trace could be found of any compact⁴ concerning a

¹ *Col. Rec.*, viii, pp. 545-6.

² P. L. B., viii, T. P. to Peters, Sept. 20, 1765; to Chew, April 1, 1766.

³ *Votes*, i, pt. i, pp. 146-149.

⁴ Belknap (*American Biography*, ii, p. 401), echoing Franklin (*Works*, iii, p. 123), says that Penn in distinguishing between the character of proprietor and that

release from quit-rents, except as pretended in the memory of a few, and that really the government had nothing to do with the quit-rents. However, the contention that there was such a connection was persevered in even as late as 1764, and as often strenuously denied by the governors.¹

The assembly appears to have been somewhat inconsistent, because if the quit-rents had been intended to support a deputy governor, why should it have endeavored to buy them up?² The fact, moreover, that in 1683 it gave the proprietor the profits from a duty on liquors and other commodities, indicates that it was not intended to appropriate them for that purpose. Indeed, the claim of the assembly is not substantiated by any law, instrument, or act which was sanctioned by Penn or his successors.³

In 1705 the assembly, while still maintaining its contention over the quit-rents, agreed to pass an act for their easier and more effectual collection. It was stated in the preamble that ever since the first location of lands in the province, the quit-rent reserved had been irregularly collected, not only to the great loss of the proprietor, who thereby had been kept out of his just rights, but also to the great inconvenience of the owners of property, in that they had no certain or exact accounts of their indebtedness. Moreover, it was declared that upon the transference of lands encumbered with quit-rents, the arrears often became a total loss to the purchaser, and that on account of the people's negligence the quit-rents had been allowed to run so far in arrears that the payment of what might be easy if rendered yearly, became very

of governor, urged the necessity of supporting government with dignity, and that by complying with this expedient, the people would be freed from other taxes. But there is no proof that the proprietor ever made this statement.

¹ *Votes*, i, pt. ii, p. 41; *Col. Rec.*, ii, p. 419; Lloyd, *Vindication of the Legislative Power*; Speech of Joseph Galloway, 1764.

² P. L. B., iii, T. P. to Peters, Oct. 6, 1755.

³ Cadwallader, *Law of Ground Rents*, p. 45.

burdensome when paid all at one time. Therefore the receiver general and his deputies should open an office in the counties every March, and there receive the quit-rent from the freeholders, who, having been given ten days' notice, should appear personally or by representatives and pay the necessary amount. The sums paid and the lands on which they were paid, should be entered in a roll made for each county. A copy of this was to be kept in each town within the county, and to be open to the view of every person desiring it. Neglect to pay at the expiration of the ten days' notice warranted the receiver-general or the respective collectors to levy by distress, or the proprietor to bring an action for debt at the county court. Tenants from whom wheat was due should deliver a good merchantable article at a mill within a mile of navigable water, and the miller's receipt shown to the collector or receiver-general was to be accounted a sufficient payment. Furthermore, no person could be distrained or sued for rent till six months after the first demand, and he should have recourse to all the rent-rolls, books, and accounts of the receivers or collectors, for the purpose of proving any payments already made. In no case should the quit-rent be increased, but the sum first reserved must be continued; and no person, after giving the receiver or collector a proper account of what land he had alienated, and after the same had been entered on the roll, should be sued or distrained for rent at any rate higher than that which had been specified. No one should be obliged to pay quit-rent for such parts of his or her lands or lots as he or she might have conveyed to another, who resided upon land adjoining. No proportions or parts of quit-rent for lots or lands sold or otherwise alienated after 1706 were to be less than one shilling sterling for new tenants, and a bushel of wheat for old tenants. Upon alienations before 1706 the receiver could not be obliged to take less than three pence sterling, or a peck of wheat. The receiver-general or his deputies were also to enter on the respective rent rolls every

such alienation, and for the entry the purchaser from the original grantee should pay one shilling. Finally, the justices of the peace could grant writs of replevin returnable before a court of common pleas.¹

This proved of little avail, for complaints of mismanagement and extortion were unceasing. In 1725 it was stated that the first purchasers paid high prices for their lands, and were subject besides to the payment of a perpetual quit-rent which far exceeded what the proprietors of adjacent provinces required of their tenants; but in the land office at that time even higher rents were demanded.² The proprietary officers replied that in Maryland the first quit-rents were two shillings sterling, or twenty-four pounds of tobacco per hundred acres, and later four shillings on the same number. If there had been any relaxation, it was given for the consideration of three shillings per hhd. on tobacco shipped to England, which amounted to more than the Pennsylvania quit-rent. The purchase money was also paid in Maryland. In Virginia and New York, the quit-rent was two shillings six pence per hundred acres, and the charges of the grant frequently were equivalent to a purchase. In North and South Carolina the rate was one penny per acre, while in the Jerseys the whole country being sold off to certain purchasers, they could reserve no quit-rent to themselves, but for the lands granted before the sale about four shillings per hundred acres was the customary rate.³

The destitute circumstances of the young proprietors in 1732 made it imperative for them to advance the quit-rents. They also claimed that they should be paid in sterling, or at a corresponding rate in currency, especially since the assembly in 1729 had stated in its address to the Penns, "As the quit-rents are to be paid in English money, or the value thereof in coin current, it is our sense that an English shilling, the com-

¹ Bradford, *Laws of Pa.*

² Lloyd, *Vindication*, etc.

³ Logan, *The Antidote*, etc.

mon quit-rent for one hundred acres, cannot be otherwise discharged than by such a shilling, or its real value in coin current."¹ Notwithstanding this declaration the payment of the quit-rents in sterling was as much disputed as ever, and the assembly insisted on the proprietors receiving paper money at its face value; but, a compromise was effected by an act passed May 19, 1739. In the preamble of this, as of the preceding act, the statement was made that the quit-rents were greatly in arrears—a fact which, owing mostly to the tedious and expensive methods employed for their recovery, had proved a real loss to the proprietors, and had brought considerable trouble on the province. Moreover, it was asserted that the purchase of silver to pay them would involve hardship for the freeholders, and that payments in specie might depreciate the paper money. Hence the Penns for a period of ten years were to be given £130 annually, in addition to a lump sum of £1200 from the interest on the paper money, provided they would agree to take currency instead of sterling. The currency was rated according to the "proclamation money" of 6 Anne chap. 30, and was to be used in the payment of quit-rents upon all grants made prior to 1732; but payments on later sales should be governed according to the terms of each transaction, as expressed in the patent. The method of collecting the quit-rent was then carefully specified.² But the assembly never fully executed the compromise.³

This completes the history of the land system so far as the assembly had any direct connection with it. We are now ready to consider, finally, the regulations of 1765, and the schemes of the land speculators. It has been noticed that the proprietors were unable to prevent the occupation of lands on the frontier by squatters, and that toward the middle of the eighteenth century the evil developed with alarming rapidity. Moreover, deputy surveyors and land speculators often sur-

¹ *Votes*, iii, p. 336.

² Franklin, *Laws of Pa.*

³ *Col. Rec.*, viii, 537.

veyed land for themselves and their friends. Sometimes they did this under assumed names, without a warrant from the land office, and on the pretense that the land had already been appropriated. But it often happened that other persons had previously found that the land was vacant. Hence these proceedings of the surveyors and speculators made it difficult for the settlers to get their land surveyed till the speculators had been satisfied. Again, even in cases where a warrant had been regularly issued,¹ unless the tract was accurately described, they would frequently keep the choice portions for the same purpose.²

It was to check such evils that the proprietors directed new regulations for the land office to be issued, June 17, 1765, and what was known as the "application system" was put into operation. Instead of granting a warrant immediately, the name of the applicant for any tract of land, the date of the application, and the description of the land sought was entered first in the day book, as it was called, and then in the warrant book.³ Not more than three hundred acres should be granted to a single person without a special order from the proprietors. These tracts should be surveyed in each county. Within six months the survey was to be returned to the surveyor-general's office. Then a warrant should be sent from the secretary's office to the surveyor-general, ordering him to accept the survey and file a certificate of its return with the secretary. Within six months after the date of the return the applicant

¹ It may be said, however, that legitimate surveys were occasionally made without any actual warrant or order from the land office. This gave rise about 1760 to what was called a "warrant of acceptance," which stated that by consent of the land officers a survey had been made, and that the survey was now to be accepted. Smith, *Laws of Pa.*, ii, p. 147.

² P. L. B., vii, T. P. to Peters, Aug. 10, 1763; viii, to John Penn, Feb. 10, 1764; and to Peters, June 8, 1764.

³ In September 1769, applications, as such, ceased, and applications on which warrants were to be issued were received and warrants issued thereon. Huston, *Original Titles*, etc., p. 323.

should make full payment for the land to the receiver-general, at the rate of £5 sterling per hundred acres or its equivalent in currency. Interest also should be paid from a date six months after the application to the time of payment. But to guard against fictitious applications, *i. e.*, applications for land to be held for speculative purposes, a clause was to be inserted in the warrant requiring *bona fide* settlement as a condition of its validity. Again, owing to the dilatory practices of the surveyors and to the failure of the the applicants to attend them at the proper time and place, many warrants issued several years previous were still in the secretary's office. Hence they were to be sent to the surveyor-general in order that the proper return of the surveys should be made. Moreover, as the purchase money in many parts of the province remained unpaid, thereby creating many intricacies in claims, the possessors were required to take out patents for lands long previously surveyed. All who claimed land on account of settlement or improvement must make application to the land office, and bring authentic certificates from some neighboring magistrate of the nature of such improvements, otherwise the land would be regranted. Neither were improvements to be bought and sold without a warrant specially issued for that purpose. The deputy surveyors were also forbidden to buy them, to receive applications for land, to survey any tracts without orders from the surveyor-general, or to continue their irregular practices.¹

Examining now more in detail the schemes of the land speculators, we find that, notwithstanding these regulations, the attention of the proprietors was called to the fact that men of this class continued to make large surveys in localities most suitable for immediate settlement.² Complaints soon spread

¹ P. L. B., viii, T. P. to Peters, Sept. 20, 1765, and to Physick, Sept. 22, 1765; ix, to Tilghman, Nov. 7, 1766, and to John Penn, Aug. 5, 1767; Smith, *Laws of Pa.*, ii, p. 160 *et seq.*; *Col. Rec.*, ix, p. 381.

² Penn-Physick MSS., iii, E. Physick to T. P., Apr. 10, 1769; *Ibid.*, *Private Corresp.*, v, Richard Penn to T. P., Aug. 14, 1770.

that these were just the lands wanted for immediate occupation. It was clear that the toleration of such monopolies was unwise, as the frontiersmen for fear of the Indians did not care to live in scattered groups, especially when the rest of the country was so inhospitable. On the other hand it was believed by many persons in the province that the proprietors themselves were accustomed to hold large tracts of land on the frontier until fabulous prices could be secured. But this was a fancied rather than a real grievance, for, whatever the truth of the matter might be, the actual effect was not injurious. The proprietors were generally opposed to land speculation, and in fact refused several liberal offers to purchase town squares and other property. Their motive in the refusal was naturally private advantage, because they were as much entitled to the unearned increment as the people of the province. But though the people were unwilling that the proprietors should commit such a grievous injustice as to hold lands for a rise in value, they were themselves not averse to land speculation.

This was clearly shown in the propositions made by the officers of a provincial organization called the Pennsylvania Regiment. They formed an association for the purpose of applying to the proprietors for a large tract of land upon which they might erect a town. Each member should have a plantation according to his rank and to the subscription which he had made toward the capital stock. They desired 40,000 acres, 38,000 of which should be on the west branch of the Susquehanna, and 2,000 acres at Shamokin. For this reason they requested the proprietors to make another purchase from the Indians, and to grant them the territory on low terms and on condition of their properly defending it. But the Penns refused to entertain the proposition, on the ground that they had no right to establish a tenure by military service. They also did not care to plan any settlement before the Indians had sold the land.¹ Then the officers told the proprie-

¹ P. L. B., viii, T. P. to John Penn, July 6, 1765.

tors that they were willing to take the land on such terms of sale, and on such conditions of settlement, as might be for the public good, and advantageous to the proprietors, but on account of the military service they had rendered, and their offer to settle the land immediately, they desired terms more favorable than were usually made when common land was granted. The governor, therefore, acting in behalf of the proprietors, offered to make such a grant out of the next purchase from the Indians, the proprietary tenth of course being first surveyed. At the same time he stated that £5 currency per hundred acres must be paid on issuing the order for a survey, and whatever in addition was necessary to make £5 sterling must be paid when the patent was received. The usual quit-rent of one penny per acre, and immediate settlement by families were also demanded.¹

The negotiations continued till 1769, when the proprietors agreed to grant 24,000 acres in lots of 8,000 acres each, situated on the west branch of the Susquehanna.² The stipulations were that the whole of the purchase money on the terms just mentioned should be paid before any patents were issued, and that each tract of 300 acres should be settled by a family within two years from the time of survey. Various caveats were then entered at the land office by persons who for the improvements they had made claimed a right of pre-emption to the lands in question, but these claims were not allowed by the board of property. The officers, however, were dilatory in their payments and slow in taking out their patents. Hence the whole scheme failed of realization.³

It was fortunate that such land-jobbing enterprises were frustrated. In fact the retention of control by the proprietors over the land tended to the advantage of the people be-

¹ P. L. B., viii, T. P. to John Penn, Dec. 14, 1765, to Allen Dec. 15, 1765; to Hockley, Apr. 2, 1766; ix, to Peters, Aug. 6, 1766.

² *Ibid.*, x, T. P. to Physick, May 12, 1769.

³ Call, *Pa. Hist. Soc.*, i, no. 2, pp. 94-102 *et seq.*

cause, owing to the lack of sympathetic assistance from the colonists, they were often incapable of enforcing even their legal rights. A Pennsylvanian might succeed in establishing a monopoly. An Englishman three thousand miles away, and possessing but little real power, was not greatly to be feared. The state subsequently erected was the gainer by the proprietary policy.

CHAPTER IV

INCIDENTAL PROPRIETARY RIGHTS

IN addition to the territorial possessions conferred by the charter, certain privileges which were inherent in the nature of a proprietorship, as derived from or analogous to the feudal powers formerly held by the counts palatine, were also bestowed upon Penn. The right to receive profits from exports and imports is distinctly mentioned in the charter as belonging to the proprietor, but they should be assessed by him with the coöperation of the assembly. The other rights were of course incidental to his feudal authority. They were mainly small rents and perquisites customarily given to the governor as part of his salary. They consisted of licenses, fees, fines and forfeitures, as well as the rent from ferries, and income from official patronage.¹ William Penn claimed also the right to strays, escheats, deodands, and the right to erect windmills.²

¹ The perquisites had become so large in 1765, that the proprietors believed they were sufficient to support the governor without any salary from the assembly. P. L. B., viii, T. P. to John Penn, July 6, 1765.

² The duty of seizing stray animals, particularly horses, was entrusted to the proprietary rangers appointed in each county. The animals were sold at auction, and a portion of the proceeds paid to the receiver general. In 1717 the powers of those officers were temporarily extended to "ranging and keeping the marches of the province" and the Lower Counties secure against invaders from Maryland and elsewhere. Rangers were also employed occasionally as stewards to supervise the tenants on manors. The other rights were never exercised. *Col. Rec.*, i, p. 438; iii, p. 37; Bradford, *Laws of Pa.*; Huston, *Original Land Titles*, etc., p. 80 *et seq.*; *Penn and Logan Corresp.*, i, p. 59; P. L. B., iii, T. P. to Hamilton, Aug. 27. 1750.

Finally profits of certain markets and stalls were in some cases reserved to the proprietors.¹

In 1684 the assembly granted Penn an excise tax and an impost on exports and imports. After that body had passed a resolution that the government should be supported by the inhabitants, the law was enacted as a testimonial of the gratitude and affection of the inhabitants to the proprietor "for his great care, charge, and liberality" toward them. These perquisites were recoverable by process similar to an action for debt, and one-third of all forfeitures was also reserved to the proprietor.² Penn and the council now conferred with certain individuals about an easy method of collecting the tax, but they being interested in the sale of liquors, sent a message to him declaring that the law could not be executed without great difficulty and expense. On condition that no attempt should be made to enforce it, they even offered to raise by voluntary subscriptions a sum of £500 or more for the support of the government. In order that the industry of the province might not be retarded, Penn and the council agreed to this proposition, and the subscription commenced. "But some of the collectors were strangers and had little influence, others were a little too great to be much imposed upon, many were sick, and still others preferred their own ease to the public good."³

After Penn had returned to England in 1684 the members of the council, the "the great and rich men," proved to be not only unwilling to contribute their share, pleading exemption on the ground of their public services,⁴ but were dila-

¹ Penn MSS., *Supp. Proc.*, T. P. to Peters, Apr. 2, 1747; P. L. B., viii, T. P. to John Penn, Dec. 14, 1765; x, to Richard Penn, Apr. 30, 1772.

² *Votes*, i, pt. i, p. 28; *Charter and Laws of Pa.*, p. 138.

³ Penn MSS., Ford *vs.* Penn: "A True and Full Narrative of the Beginning, Progress, and Conclusion of the Voluntary Contribution for the Maintenance of Government, in Lieu of the Act of Excise imposed upon strong Liquors."

⁴ Inasmuch as each member of the council received three shillings sixpence a day for his services, and two pence a mile for his travelling expenses, the desire for exemption had a selfish aspect. *Charter and Laws of Pa.*, p. 147.

tory in furthering the collection.¹ Only a few spasmodic efforts were made in response to the proprietor's repeated and urgent requests to hasten the payments. His agent, Markham, sent a memorial to them with a reminder of their duty in the matter, at the same time calling attention to the erroneous idea, then prevalent, that the proprietor was wealthy and could afford to support his government. The council replied to the memorial by assenting to the repeal of the law. Of this Penn bitterly complained, but without avail.² In 1700 however, after he had repeatedly asked the assembly to recall the fact that he had received no public support for nearly twenty years, a law similar to the one passed in 1683 was enacted. But this speedily aroused opposition, and the assembly repented of its generosity. Then he offered to repeal the law if the assembly would give him an equivalent, but this proposition was not accepted. The next year Penn left the province for the second time, but it appears that the revenue arising under the act, so far as collected, was paid into the public treasury.

Fines and forfeitures were also the property of Penn and his heirs. But from the very outset only portions of these were given to them. In the majority of cases they were reserved by law for the support of the poor, the repair of roads and bridges, the payment of judges' salaries, and other county expenses. Penn complained frequently that even such fines and forfeitures as the assembly had allowed him were grudgingly paid, if paid at all.³ After his private affairs had become involved however the custom arose of paying fines and forfeitures to the governor, unless otherwise reserved.

¹ "Thomas Lloyd took it ill that the collectors should desire the council to subscribe after the multitude." Penn MSS., Ford *vs.* Penn.

² "I too mournfully remember how noble a law I had of exports and imports. * * * But Thomas Lloyd * * * complemented some few selfish spirits with the repeal thereof. * * * That has been the source of all my loads and liabilities to support myself, under the troubles that have occurred to me, on account of settling and maintaining the colony." *Penn and Logan Corresp.*, ii, p. 70.

³ *Penn and Logan Corresp.*, ii, pp. 236, 291.

So far as tavern licenses were concerned, Penn was very willing that the county courts should have the power, if not of actually issuing the licenses,¹ at least of recommending to the governor the names of those to whom they should be granted.² The rates were early fixed by law, and the licenses themselves were issued by the governor, on the recommendation of the justices or of the mayor's court of Philadelphia.³ But as the population increased, it was occasionally found expedient for the justices in the frontier counties to issue licenses, the proceeds of which formed a portion of the county revenue. Toward the middle of the eighteenth century the claim was made that licenses were a gift from the people to the governors. It was also said that the justices in order to make a return to the governor, for continuing them in office, often recommended persons simply because they were agreeable to them. For these reasons it was urged that the governor should be excluded from any share in issuing such licenses. It was even insinuated that the proprietors connived at the practice in order to share the profits with the governor.⁴ A conference was therefore held in London in 1765 between the proprietors and representatives of the assembly, the re-

¹ "That no person within this government shall be licensed by the governor to keep ordinary, tavern, or house of public entertainment, but such who are first recommended to him under the hand of the justices of the respective counties, signed in open court, which justices are and hereby shall be empowered to suppress and forbid any person keeping such public house upon their misbehaviour, on such penalties as the law doth or shall direct, and to recommend others from time to time as they shall see occasion." *Charter of Privileges*, 1701; *Col. Rec.*, II, p. 59.

² *Col. Rec.*, i, p. 529; *Penn and Logan Corresp.*, ii, p. 246.

³ Acts passed in 1700, 1710, 1718, and 1721, provide that the justices should have the power of recommendation, as well as of fixing tavern rates; and regulated the fees for licenses.

⁴ *Votes*, v, p. 337: "I join with you," wrote Thomas Penn to Gov. Hamilton, Aug. 10, 1763, "that public houses ought not to be unnecessarily increased, but I think the people had as great inclination to distress a governor as to preserve the morals of the people, and as this is so large a perquisite of government, it ought to be closely attended to." P. L. B., vii.

sult of which was that the former agreed to allow the grand juries to recommend to the justices the granting of licenses, and they in turn to the governor. But a few months later the governor was ordered not to depart from the old method, lest thereby he should give up any of the rights of government. The proprietors offered, however, to exchange their rights to grant licenses for a lump sum to be paid annually to the governor, but to this the assembly would not consent.¹

Fees were early regulated by the assembly, though as in other provinces it was contended that the right to do this was vested exclusively in the governor and council.² But, in spite of objections from the council the assembly established its claim to settle fees, even extending it to the private affairs of the proprietors insomuch that its reduction of fees at different times caused several protests and resignations.³

Finally, the proprietary claim to ferries was disputed. The more correct interpretation of the words of the letters patent conveying absolute ownership of the rivers is that the proprietors had the legal right to establish ferries, and to receive the profits therefrom. This view is further strengthened by the fact that they represented the crown. By the common law no one could establish a ferry without prescription or a charter from the crown. Ferries were franchises granted by the crown, and mere riparian possession did not necessarily entitle the possessor to a franchise.⁴ The establishment of ferries was, therefore, a royalty belonging to the proprietor irrespective of any act of the provincial legislature. But the assembly in 1693 took a different view. It expressed the

¹ Penn MSS., *Private Corresp.*, v, Richard Penn to T. P., Feb. 11, 1765; P. L. B., viii, T. P. to John Penn, July 6 and Nov. 30, 1765.

² *Col. Rec.*, i, p. 471; ii, p. 53; *Votes*, ii, p. 55.

³ *Votes*, ii, pp. 400, 439; *Col. Rec.*, v, p. 578; Penn MSS., *Offic. Corresp.*, i, S. Clement to J. Logan, May 30, 1720.

⁴ *Amer. and Eng. Cycl. of Law*, vii, p. 941, and cases cited.

idea that the establishment of ferries was a duty of the governor and council. Fletcher, the royal governor, stated that he believed it was a royalty granted to the proprietor, and expressed surprise that the assembly should be desirous of abridging his rights. He then referred the matter to the commissioners of property, and with their acquiescence issued a proclamation prohibiting all persons from plying any ferry within a certain distance from the proprietary ferries. The assembly, however, had some ground for its claim, because Penn in 1684 had assented to an act establishing certain ferries at the expense of the counties wherein they were situated. The rates of ferriage were fixed by this act, and it was provided that the profits should be paid into the county treasury. But in case private parties were willing to maintain a ferry at specified localities they might receive the profits.¹ This was perhaps an unfortunate concession by the proprietor, but his presence in Pennsylvania at that time was sufficient to protect him against the immediate loss of any rights in consequence of it. In 1696 Gov. Markham and the council ordered a ferry to be established on condition that the ferryman should give security to the proprietary officers for the proper performance of his duties.² Indeed several acts of this description were passed in 1700 and 1701, but chiefly to regulate the rates of ferries.³ During Gov. Keith's administration, 1716-1726, seven acts were passed, either giving certain specified persons the right to establish a ferry, or allowing the county court to lease it out. The ferrymen were amenable to the county court, the rates of ferriage were regulated, and the proceeds were turned into the county treasury, or given to the tenants of the ferry.⁴ The assembly also in 1736 resolved that the

¹*Charter and Laws of Pa.*, p. 137.

²*Col. Rec.*, i, p. 514.

³Bradford, *Laws of Pa.*

⁴One feature of the policy of the English government was to restrict the passage of private acts by the colonial legislatures. In accordance with this, an instruction had been issued by the lords justices to Keith, July 23, 1723, that he should with-

granting by the proprietors of licenses to keep ferries and to regulate the rates of ferriage without the concurrence of the legislature, was prejudicial to the general interests of the province. The Penns under protest agreed that the rates should continue to be determined by the legislature, and that no ferries should be established except where the county court or highway commissioners might see fit to recommend them¹.

hold his consent to any private act, until proof was submitted to him in council that publication had been made of the parties' intention to apply for such an act. *Votes* ii, p. 394. In spite of this instruction, Keith passed the bills for establishing ferries.

¹ *Votes*, III., pp. 249-251. From the appointment of Gov. Thomas in 1741 as the official head of the land office, the governors were entrusted with the power of granting licenses for ferries.

CHAPTER V

THE DIVESTMENT ACT

FROM an early date the wildest ideas prevailed in Pennsylvania concerning the wealth of the proprietors.¹ It was estimated by some that their income from the province amounted to £100,000 per year, and that the value of their estates there exceeded £10,000,000 sterling. Upon this subject the imagination of Benjamin Franklin ran riot when he gave the authority of his name to the document, which as it appears in the appendix to his "Historical Review of the Constitution and Government of Pennsylvania" purports to be based on Thomas Penn's estimate of the value of the proprietary estates. No authentic document of this origin or nature is known to exist. Prolonged and careful research among the Penn Manuscripts has revealed but one direct reference to Franklin's conclusion as based thereon, and that a declaration by the proprietor whose name is attached to it, that its contents and conclusions were false. "It is quite impossible," wrote Thomas Penn, May 18, 1767, to Mr. Peters, the former secretary of the land

¹ "People imagine because we are at the head of a large province we must be rich; but I tell you that for fifteen years, from 1732 to 1747, I laid by about £100 a year." P. L. B., ii, T. P. to Peters, Oct. 9, 1749.

It must be remembered that the proprietors were subjected to an enormous expense during the continuance of the litigation with Lord Baltimore. Several officers of the province, as the registers general of the counties and the naval officers of the port of Philadelphia, whose salaries aggregated at least £1600 per annum, were also paid by them. Indeed, not till late in the history of the province were their revenues very large. *Ibid.*, vi, T. P. to Hamilton, Oct. 18, 1760; x, T. P. to Hockley, Dec. 1, 1773; Penn MSS., *Pennsylvania Land Grants*.

office, "that Mr. Franklin's accounts can have any foundation."¹

Dr. Franklin was undoubtedly well acquainted with the general procedure of the land office, and to this fact may be ascribed the plausibility of his carefully elaborated estimate. But it is not at all likely that his statements were drawn from authoritative sources. He was not on good terms with the proprietary officers, while his dislike of the Penns and their cordial dislike of him are only too well known.² Hence both the proprietors and their officers would never furnish him with any detailed estimate of their property, because he might use it for a sinister purpose. Wherever he derived his information, whether from his own imagination or partly from the imagination of others, it must be regarded as the expression of an opinion based on prejudice and not on facts.

Having thus indicated from one point of view the unreliability of Dr. Franklin's estimate, let us consider it from another. The "Pennsylvania Land Grants" give an early account of lands disposed of by the commissioners of property in the province and the Lower Counties. Herein it appears that previous to 1712, 91,000 acres were sold at prices ranging

¹ "Mr. Franklin has published a book containing many gross falsehoods." P. L. B., vi, T. P. to Hockley, Sept. 21, 1759.

² Dr. Franklin's conference with Thomas Penn in 1758 shows his feeling toward that proprietor. Speaking of Thomas Penn's remarks about his father's charter of privileges, Franklin wrote: "He said that with a kind of triumphing, laughing insolence, such as a low jockey might do when a purchaser complained that he had cheated him in a horse. I was astonished to see him thus meanly give up his father's character; and conceived at that moment a more cordial and thorough contempt for him than I ever before felt for any man living, a contempt that I cannot express in words." *Shippen Papers*, p. 111. On the other hand, the attitude of the proprietors toward Franklin is well illustrated in a letter written by John Penn, while governor of the province, to Thomas Penn, his uncle, and dated May 5, 1764. He wrote: "There will never be any prospect of ease and happiness while that villain (Franklin) has the liberty of spreading about the poison of that inveterate malice and ill nature which is deeply implanted in his own black heart."

from £5 to £130 per hundred acres. The total amount received from sales previous to the above mentioned date was £10,640. Furthermore, from entries and accounts in the secretary's office, and from abstracts of warrants for taking up lands issued between 1681 and 1756, and deposited with the surveyor-general, it was estimated that 2,544,040 acres were laid out, exclusive of 253,505 acres for the proprietary family, and 80,000 acres for various companies. On the total amount the quit-rents were valued at £3307, 16 s, 2d.¹ Again, in 1757, John Penn, grandson of the first proprietor, attested the following statement: 307,795 acres had been granted since his arrival, a short time previous. Upon this the purchase money at the rate of £15. 10 s. per hundred acres, amounted to £47,709. But of this sum only about £6,527 had been paid, while about £197,193. 10 s. was still due from the province in rent and purchase money, and £31,813 from the Lower Counties. To the government and escheated lands no value was assigned, nor were the bank lots included. The total value of the estate was estimated at £3,806,012.²

Though some small returns were made to the proprietors during the Revolution, the land office was practically closed from 1775 to 1781, when it was formally reopened under authority of the state. It was natural also that the difficulties connected with the settlement of the estate of Thomas Penn should prevent the disposal of land on any large scale. The sales of land and balances due on contracts already made, which could not readily be perfected by patent, however, were the principal sources of the proprietary revenues at that time. Compared with this the quit-rents on the patented lands, being all that could be legally recovered by distraint, were of no great importance. It appears probable that the total yearly amount of quit-rent in the province, as reckoned in 1775, was £3,470 sterling.³

¹ Penn MSS., *Pennsylvania Land Grants*.

² *Ibid.*

³ Penn-Physick MSS., iii, E. Physick to Juliana Penn, Nov. 30, 1775, and May 28, 1778.

But additional evidence on this point appears in connection with the history of the divestment act. We find that when the supreme executive council and the assembly elected under the constitution of the commonwealth came into power, the friends and the officers of the proprietors saw only too clearly that confiscation loomed threateningly before them. In 1778 laws were enacted making £155 continental money a tender for £100 sterling, disabling any person who would not take an oath of fidelity to the state from selling land or suing for a debt, and compelling all persons who held offices by commissions under authority of the crown or of the proprietors to take the oath at once, or forfeit their real and personal estates.

Now Edmund Physick had been for thirty-three years in close connection with the land office. At the time of which we are speaking he was receiver general. By long experience then he was eminently fitted to speak with authority concerning the proprietary estates and income. In compliance with the request of the proprietors, and fearing lest from the lack of proper knowledge on this subject, the legislature might pass an act for the confiscation of the proprietary estate which would be too sweeping in its provisions, he prepared the "Pennsylvania Cash Accounts," which is a summary extracted from the various journals of property, of the amount of the proprietary estates and the grants and revenues therefrom, principally between the years 1701 and 1778. Prior to 1700 no regular accounts were kept. The "Cash Accounts," together with a deposition sworn to before the chief justice of the commonwealth are the authority for the following statements. It is believed to be sufficient to give a fairly accurate view of the grants and receipts. At the outset it is necessary to state that from the government, from escheated lands, from the three-fifths of gold and silver ores and the one-fifth of other ores, no income of practical importance was realized. From different surveys and computations it was estimated that the proprietary estates, exclusive of the Lower Counties, included 27,955,200

acres. The amount of land given, granted, and appropriated between 1681 and 1776, including the proportions allowed for roads, bestowed upon members of the family, and the like, was 6,363,072 acres, leaving thus 21,592,128 acres from which the proprietors never received any return. In fact, just before the war several thousand acres were sold nominally for large sums, but of these nothing was ever paid. The gross sum of money received for lands from 1701 to 1778 was £688,486, exclusive of that which since 1757 was received for manor lands. The quit-rent reserved during this period amounted to £182,248-12s. 10d, sterling. But of this only £63,679 8s. 3d. had been received, leaving £118,569 4s. 7d. still due. In 1732 the annual quit-rents and profits amounted to £567 7s. 2d.; in 1769, to £4,595 13s. 7d., and in 1776, to £10,204 os. 7d. The profits and emoluments arising from royalties, patronage, and appointments to office never exceeded £6,000 sterling per annum, and that sum was reached only very late in the history of the province. In 1776 common lands were usually granted at the rate of £10 per hundred acres, £5 for purchase money and £5 in lieu of one penny sterling quit-rent. It is thus seen that the quit-rents were not compounded for until the outbreak of the Revolution, though the fact that they were so scanty, had been urged before as a good reason for compromise. If the 21,592,128 acres for which nothing had been received, had been sold at £10 per hundred acres, £2,159,212 14s. would have been realized.

A comparison of this summary with the one given by Franklin will further disclose the unreliability of the latter. But such a comparison is useless, because the "Historical Review,"¹

¹ Many of the statements contained in the "Historical Review" have been repeated by later writers, who have not taken the trouble to examine their accuracy. In fact, this work of Franklin has been often quoted as a marvel of correctness, but a critical investigation of it will show that it is the production of a partisan. The partisan character of the book is constantly shown by the strain of argument, as well as by the cutting sneers and sly innuendos. Franklin describes a series of wrongs and outrages on popular liberty which are quite dreadful to contem-

whether actually written by Franklin or not, was edited and expressly promulgated by him to serve a partisan purpose.¹ Though it might be urged that Physick's account is partial, yet, if so, the inaccuracy of Franklin's assertions is the more clearly established from the fact that it was Physick's interest to magnify the value of the estate as much as possible, in order to induce the commonwealth to grant a more liberal allowance.

Early in 1779 a committee was appointed by the assembly to examine the claims of the proprietors, to report "wherein they were incompatible with the happiness, liberty, and safety

plate. By this means he hoped to arouse feelings of hostility toward the sons of William Penn, and to destroy respect for the founder of Pennsylvania himself. In the preparation of this work further, certainly until the time when he became personally interested in the politics of Pennsylvania, practically the only authority upon which Franklin relied was the "Votes" or proceedings of the provincial assembly. Even then he was very careful to select for his work only the instances of complaint and invective which were uttered when the assembly felt itself aggrieved. He studiously avoided the cases and there are many of them where the assembly spoke kindly or even gratefully of William Penn or his sons. See *Votes*, i, pt. i, pp. 6, 9, 12, 13, 21, 23, 35, 36, 143, 144; iii, pp. 130, 182, 221, 436; iv, pp. 54, 61. *Col. Rec.*, iii, p. 611. After the death of William Penn, moreover, the following testimonial was drawn and signed by a large number of Quakers. Among those who signed it was *Penn's former arch enemy, David Lloyd*. It ran as follows: "It becomes us particularly to say that as he was our governor he merited from us love and true honor, and we cannot but have the same regard to his memory when we consider the blessings and ease we have enjoyed under his government, and are rightly sensible of his care, affection, and regard always shown with anxious concern for the safety and prosperity of the people, who many of them removed from comfortable livings to be adventurers with him, not so much with views of better acquisitions or greater riches, but the laudable prospect of retired quiet habitations for themselves and posterity, and the promotion of truth and virtue in the earth."—Penn MSS. *Phila. Land Grants*. The "Historical Review," presenting as it does but one side of the subject, is therefore entitled to little regard as an authentic history of Pennsylvania.

¹ In the manuscript "*Franklin Papers*" is the following account, dated Dec. 31, 1759: "Printed for Benj. Franklin by Wm. Strahan—

Review of the Constitution of Pennsylvania	118
reams of paper for do.	118
Paid for binding 600 Reviews, and shipping	118

of the state, and to prepare and offer to the house for consideration suitable resolutions to remedy the evils arising from such claims." The supporters of the proprietor immediately retained the services of the two noted lawyers who appeared before the assembly on behalf of the Penns. The committee summoned Physick and examined his accounts. Thereupon in April, 1779, it reported that, the charter of Charles II being made as well for the enlargement of the English empire, the promotion of trade, the advancement of civil society, and the propagation of the gospel, as for the particular benefit of William Penn and his heirs, it was to be considered as a public trust for the advantage of those who settled in Pennsylvania, coupled with a particular interest accruing to William Penn and his heirs, but in nature and essence subordinate to the great and general purposes of society. Again, by the "Conditions and Concessions," such a portion of the land as was not reserved in the form of manors was held in trust by the proprietors for the people, and the proprietors by imposing quit-rent and terms for the payment of money (except on manors), had violated the concessions on which the people of Pennsylvania were induced to become settlers, usurped a power inconsistent with their own original conditions, and defrauded the settlers of large sums of money.

It was deemed advisable, however, to secure the opinion of Chief Justice McKean on the following points: Whether Charles II had the authority to convey the land to Penn; whether Penn's grant was absolute, or whether he and his heirs were trustees for the people; whether the "Conditions and Concessions" affected only the first purchasers; and whether quit-rents were intended for the support of government, or were they reservations arising from the nature of the estate. The chief justice declared as his opinion that Charles II had sufficient authority to make the grant; that the grant was absolute to William Penn and his heirs, but that the interest of the grantee and his heirs was so connected with the settlement of

the province that the former could not be promoted without the latter. He believed, moreover, that the "Conditions and Concessions" were confined to the purchasers of that time as the words "agreed upon by the proprietary and governor, and those who are the adventurers," fully indicated.¹ In answer to the last question the chief justice observed that, although several assemblies stated that quit-rents were reserved for the support of government, yet this was not evidenced by any law, act or instrument in writing which had been assented to by William Penn or his heirs, for nothing of the sort was mentioned in any of the deeds or patents wherein they were reserved. They had furthermore never been applied to that use, but had been reserved as private property.² In consideration of the fact that the quit-rents had been appropriated for private use by all other proprietors under similar charters, they were to be viewed as reservations arising from the nature of the estate which William Penn had in the soil, and which he as mesne lord could legally reserve.³

With its revolutionary ideas somewhat modified by this conservative judicial opinion, the committee finally reported in favor of confiscation, but with certain reservations. This report was embodied in the divestment act of November 27, 1779, vesting the estates of the proprietors in the commonwealth.⁴ By the eighth section of this act the private estates and proprietary tenths or manors of which surveys had been returned to the land office before July 4, 1776,⁵ together with

¹ 2 *Binney's Reports*, pp. 476-486.

² Since practically all of Penn's receipts during his financial troubles were from quit-rents in Pennsylvania, there is some evidence that, until the assembly made provision for the governor's support, the salary of that official was paid, at least in part, from the quit rents. *Penn and Logan Corresp.*, ii, pp. 191, 236, 264, 285, 291.

³ Hazard, *Reg. of Pa.*, x, pp. 113-115. ⁴ Smith, *Laws of Pa.*, ii, p. 258 *et seq.*

⁵ It would appear then that what was not held by the Penns in their private several right was public property, *i. e.*, simply the mesnality was extinguished. *U. S. vs. Repentigny*, 5 Wallace, pp. 211, 267.

the quit-rent and other rents and arrears of rents reserved out of the said tenths or manors, should be confirmed to their owners. By the ninth section the quit-rents and arrears, except as above, were declared void ; while it was provided that arrears in purchase money should be payable to the commonwealth. By the fourteenth section it was enacted that £130,000 should be given to the claimants and legatees of Thomas and Richard Penn, "in remembrance of the enterprising spirit of the founder, and of the expectations and dependence of his descendants." This amount was to be payable in sums of not more than £20,000 or less than £15,000 sterling in any one year, the first installment to be paid at the expiration of a year after the war. By an act of April 1, 1784, the barracks in the northern liberties were directed to be sold by the supreme executive council for the purpose of raising a fund to pay the first installment. In February 1785 this body was ordered to draw warrants on the treasurer for the amount. In case the proceeds arising from the disposal of the barracks were not sufficient to pay such warrants, the deficiency was to be supplied from the impost, the rate of exchange being specified. By subsequent acts an interest of 6 per cent was allowed on installments in arrears. Finally, the law of April 9, 1791 provided for adjustment and full discharge of the debt.¹

The larger part of what remains of the old Penn manors at the present time is in and around Wilkesbarre. The principal properties in the centre of the state are in Luzerne County, a remnant of an estate in Sunbury Manor, embracing about 1500 acres ; a tract of land in Plymouth township ; some woodlands and several small tracts in Salem township, from which no revenue is derived ; some reserved mineral rights in different parts of Pennsylvania ; and a tract of 1,000 acres along Harvey Creek in Jackson township. The property in Philadelphia belonging to the Penn estate consists of about three dozen ground rents in what was the manor of Springetts-

¹ Dallas, *Laws of Pennsylvania*, ii, pp. 205, 240. 512 ; iii, p. 67.

bury, adjoining the city on the north, and one irredeemable ground rent on improved property in Race Street near Twenty-first. With some reversionary rights in property which had been granted by the first proprietor for public buildings, this is the sum total now in existence of the possessions of the Penns. The quit-rents in the proprietary reservations continued until cancelled by cash payment. In addition to the above compensation from the commonwealth, parliament in 1790 granted an annuity of £4,000 to the oldest male descendant of William Penn by his second wife; and certain sinecure offices for a time were bestowed on other members of the family. This amount was regularly paid to the heirs till a few years ago, when Lord Salisbury was prime minister. The attacks of the Radicals upon this class of annuity grants resulted in its cessation. The annuity was thereupon compounded for at its value for about twenty-five years. With this recompense it was considered that the crown had done its duty by the memory of its illustrious subject.¹

¹ Art. in *Philadelphia Press*, Oct. 28, 1894.

CHAPTER VI

INDIAN AFFAIRS

IT would be a matter of considerable difficulty to state with exactness the names and location of the various Indian tribes which inhabited Pennsylvania during the provincial period. The powerful confederacy of the Six Nations claimed rights of ownership to the greater part of the territory. Its war parties occasionally made their way through the forests to battle with the southern Indians, but as a rule their attacks were directed against their northern neighbors. The tribes actually on the soil of Pennsylvania, however, were chiefly the Delawares, the Shawanese, the Nanticokes, and the Conestogoes. The first named used as a hunting ground all the region extending from the sources of the Delaware and Susquehanna rivers, southward to the Lehigh hills, and westward far beyond the Susquehanna. The Shawanese came to the Ohio from the south, and roamed over the territory upon which later stood Fort Pitt. A large part of them advanced to the eastward, and built their wigwams, some near the confluence of the Lehigh and the Delaware, some near the site of Philadelphia, and still others in the Wyoming region. But by 1755 most of them had returned to the Ohio. The Nanticokes probably made their way from Maryland northward to the Wyoming region, and the Conestogoes dwelt in Lancaster County, near the mouth of Conestogoe Creek.¹

With this general idea of the location of the several tribes, we are ready to discuss the policy of the proprietors and of the

¹ *Memoirs, Pa. Hist. Soc.*, xii, pp. 52, 86, 88, 90, 91; *Collections, Pa. Hist. Soc.*, i, no. 2, p. 85 *et seq.*

assembly in the management of Indian affairs. It seems needless to say that the policy of William Penn toward the Indians has been a favorite theme for poet and artist, while his somewhat imaginative ideas about them have been represented as indicating a spirit of proper and reasonable benevolence. He believed, strangely enough, that the aborigines were descendants of the ten lost tribes of Israel, and was at some pains to trace resemblances between the two.¹ But his purpose, however lofty was a mistaken one, and could not be realized, because it arose from ignorance of the essential characteristics of the Indian nature. The desire that Indian trade should be fairly conducted was laudable enough, but that juries in cases affecting an Indian should be composed equally of white men and red men,² was a notion whose absurdity was speedily revealed. Penn's addresses to the Indians in general, as well as to the emperor of Canada, a supposed savage potentate, breathe nothing but a spirit of fatherly kindness coupled with earnest protestations of interest in their temporal and spiritual welfare.³ On the other hand, it is well known how the Indians revered Onas (a pen) as they called him, and many a year passed before the recollections of his friendship faded from their memory, and his name ceased to be repeated around the council fire.

¹ "For their original, I am ready to believe them of the Jewish race, I mean of the stock of the ten tribes, and that for the following reasons: First, they were to go to a land not planted nor known, which to be sure Asia and Africa were, if not Europe, and He that intended that extraordinary judgment upon them might make the passage not uneasy to them, as it is not impossible in itself from the easternmost parts of Asia to the westernmost parts of America. In the next place, I find them of the like countenance, and their children of so lively resemblance, that a man would think himself in Duke's Place, Berry street, in London, when he seeth them. But this is not all. They agree in rites. They reckon by moons. They offer their first fruits. They have a kind of feast of tabernacles. They are said to lay their altar upon ten stones; their mourning a year; customs of women; with many other things that do not now occur [to me]. Penn's letter to the Free Society of Traders, August, 1683. Cornell, *History of Pa.*, pp. 115, 118.

² *Charter and Laws of Pa.*, p. 130.

³ Hazard, *Annals of Pa.*, pp. 532-3, 579.

This kindly treatment of the savages, it may be said, was not an insignificant factor in the growth and prosperity of the province.¹

The idea that the Indians were rightful owners of the soil was very strong in the mind of Penn, while his sons, though not so positive as to the strength of the nomadic tenure, bought lands from motives of custom and policy.² In Pennsylvania, as elsewhere throughout the colonies, the hold of the Indian upon the land was precarious. Different tribes or groups among them in their wandering life frequently occupied in succession the same tract, and might as often sell it to the white man. There, as elsewhere, for many years, Indian deeds defined boundaries in the loosest manner, so that the situation of the territory granted could not be easily ascertained. For these reasons, then, the opinion of Penn has not received the confirmation of law. The policy of his descendants in quieting Indian titles was similar to that pursued in other colonies, as will be shown later.

The first deeds of which we find mention were executed in July and August 1682, and recited the sale of a small piece of land between the Delaware River and Neshaminy Creek.³ A year later all lands situated between certain creeks and the limit that would be reached by a two day's journey with a horse westward, were disposed of. One chief gave up his right to lands west of the Schuylkill. Several chiefs sold all the region between the Schuylkill and the creeks west of it. Still more gave up their rights to certain territory between the

¹ The assembly, in 1722, stated that the "peaceable and prudent measures which the late honorable William Penn, our most worthy proprietary, took with the native Indians has been under God the happy foundation of the perfect good understanding between the English inhabitants of this colony and the native Indians." Bradford, *Laws of Pa.*

² Penn was also advised by the Bishop of London to purchase lands from the Indians. Penn MSS., Ford *vs.* Penn; William Penn to the Committee of Council, Aug. 14, 1683.

³ Smith, *Laws of Pa.*, ii, p. 110; *Penn. Arch.*, 1st series, i, p. 47.

Delaware and the Susquehanna, and extending southward to Chesapeake Bay. Not long after several Indian sales were made, and included a large portion of what had already been sold southward to Duck Creek in the Lower Counties, and westward as far as a horse could travel in two summer days.¹

In June 1692 land between certain creeks flowing into the Delaware, and stretching westward to the furthest bounds of the province, was given up.² Then came in 1696 what was known as Dongan's deed. As early as 1684 Penn had endeavored to secure land on the Susquehanna, but the Five Nations refused to sell it, and Gov. Dongan and the council of New York complained to the king, that Penn's pretensions to the Susquehanna would be injurious to New York.³ The proprietary agents nevertheless induced Dongan to purchase from the Five Nations lands lying on both sides of the river.⁴ But the great object of Penn was to obtain the stream and its tributaries throughout their entire course within the province. Therefore, although the lands in that region were not intended for immediate settlement, the proprietor would not relinquish a grant which would secure the whole of the Susquehanna from the pretensions of an adjoining province, especially as the boundaries by charter were very uncertain. Hence in April, 1701, he entered into agreements with the Susquehanna, Shawanese and Potomac Indians, by which they confirmed Dongan's deed, the original having been lost, and relinquished all title of the Susquehanna tribes to lands on that river.⁵ In 1722, however, at a treaty held with the council and Gov. Keith, the Conestogoe Indians complained about this grant, and asserted that Penn had induced some person from New York

¹ A similar deed for lands between Neshaminy and Pennypack Creeks was executed July 5, 1697. *Pa. Arch.*, 1st series, i, p. 124.

² *Ibid.*, pp. 62-67, 88, 91, 93, 95, 116; Smith, *Laws of Pa.*, ii, p. 111.

³ *N. Y. Col. Doc.*, iii, pp. 418, 422, 798.

⁴ *Pa. Arch.*, 1st series, i, pp. 74-76, 80, 121, 122.

⁵ *Ibid.*, pp. 133, 144-147; Smith, *Laws of Pa.*, ii, p. 112.

to purchase land on the Susquehanna from the Five Nations, who claimed a right to it on the ground that they had conquered the people formerly settled there. The Conestogoes declared that the territory should be viewed as common property among them, because Penn had so promised. But the governor was inclined to have them removed from the region in question, till the secretary agreed to quiet the contention by other grants. In 1730 the proprietors believed that their own pretensions to lands on the Susquehanna by virtue of Dongan's deed were precarious.¹ Hence they were careful to secure good Indian title, and assured all prospective purchasers that they would sell no land which had not been fairly bought from its alleged owners. In pursuance of this intention, in 1732 they purchased from certain Delaware chiefs all lands lying on the Schuylkill, or any of its branches, between the Lehigh hills and the Kittatinny hills, sometimes called the Endless Mountains. The latter, a parallel range, lay some thirty miles north of the Lehigh hills and extended from the branches of the Delaware on the east, to the branches of the Susquehanna on the west.² In

¹ P. L. B., i, Proprietors to J. Logan, April, 1730.

² "We Sasooan, alias Allummapis, Sachem of the Schuylkill Indians (Delawares), in the province of Pennsylvania, Elalapis, Ohapamen, Pesqueetomen, Mayeemoe, Partridge, Tepakoaset alias Joe, on behalf of our Selves, and all the other Indians of the said Nation, for and in consideration of twenty brass kettles, one Hundred Strowdwater Matchcoats of two yards each, One Hundred Duffel Ditto, One Hundred Blankets, One Hundred yards of half Thicks, Sixty linnen Shirts, Twenty Hatts, Six made Coats, twelve pair of Shoes and buckles, Thirty pair of Stockings, three Hundred pounds of Gun Powder, Six Hundred pounds of Lead, Twenty fine Guns, twelve Gun Locks, fifty Tommyhocks or hatchets, fifty planting houghs, one Hundred and twenty Knives, Sixty pair of Scissars, one Hundred Tobacco Tongs, Twenty fine looking Glasses, Forty Tobacco Boxes, one Thousand Flints, five pounds of paint, Twenty four dozen of Gartering, Six dozen of ribbon, twelve dozen of Rings, two Hundred Awl blades, one Hundred pounds of Tobacco, five Hundred Tobacco Pipes, Twenty Gallons of Rum, and fifty Pounds in Money, to us in hand paid, or secured to be paid by Thomas Penn, Esq^r., one of the Proprietors of the said Province, the receipt whereof we do

1733, and again in 1742, the deed was acknowledged and confirmed.

Although the Six Nations admitted the validity of Dongan's deed, they still claimed the region in question. Hence the proprietors in 1736 obtained from the Six Nations, the Delawares, and the Shawanese, a further release for all lands on the Susquehanna, also eastward as far as its branches extended, northward to the Kittatinny hills, and westward to the setting of the sun. A few days later the same chiefs expressly granted all the territory comprised within Pennsylvania, and

hereby acknowledge, I have Granted, Bargained, Sold, Released and Confirmed unto John Penn, the said Thomas Penn and Richard Penn, Esq^{rs}., Proprietors of the said Province, all those Tracts of Land or Lands lying on or near the River Schuylkill, in the said Province, or any of the branches, streams, fountains or springs thereof Eastward or Westward, and all the Lands lying in or near any Swamps, Marshes, fens or Meadows, the waters or streams of which flow into or towards the said River Schuylkill, situate, lying, and being between those Hills called Lechaig Hills and those called Keekachtanemin Hills, which cross the said River Schuylkill about Thirty Miles above the said Lechaig Hills, and all Land whatsoever lying within the said bounds and between the branches of the Delaware River on the Eastern side of the said Land, and the branches or streams running into the River Susquehanna on the western side of the said Land, Together with all Mines, Minerals, Quarries, Waters, Rivers, Creeks, Woods, Timber and Trees, with all and every the Appurtenances to the hereby Granted Lands, and premises belonging or appertaining, To have and to hold the said Tract or Tracts of Land, Hereditaments, and premises hereby Granted (That is to say, all those Lands situate, lying, and being on the said River Schuylkill and the branches thereof, between the mountains called Lechaig to the South, and the Hills or mountains called Keekachtonemin on the North, and between the branches of Delaware River on the East, and the waters falling into the Susquehanna River on the West), with all and every their appurtenances unto the said John Penn, Thomas Penn, and Richard Penn, their Heirs and Assigns, to the only proper use and behalf of the said John Penn, Thomas Penn, and Richard Penn, their Heirs and Assigns forever, so that neither we the said Sasoonan alias Allummapis, Elalapis, Ohopamen, Pesqueetamen, Mayeemoe, Partridge, Tepakoaset alias Joe, nor our Heirs, nor any other Person, or Persons hereafter, shall or may have or claim any Estate, Right, Title, or Interest of, in or to the hereby Granted Land, and premises or any part thereof, But from the same shall be Escheated, and forever delivered by these presents. In witness whereof the said Sasoonan alias Allummapis, Elalapis, Ohopamen, Pesqueetamen, Mayemoe, Partridge, Tepa-

promised that thereafter they would sell no land in the province except to the children of William Penn.¹

This deed immediately brought up a dispute about what was known as the "Walking Purchase," which was obtained from certain Delaware chiefs in August, 1686. After naming certain tracts of land between the Delaware River and Neshaminy Creek, it specified that the western extent of the grant should be as far as a man could walk in a day and a half. Now in September 1718 a deed of release for lands between

koaset alias Joe, have hereunto set their Hands and Seals at Stenton, the Seventh Day of September in the Year of our Lord, one Thousand Seven Hundred and thirty two, and in the Sixth year of the Reign of King George the Second over Great Britain, etc.

We the above named Sasoonan alias Allummapis, Elalapis, Ohopamen, Pesqueetamen, Mayemoe, Partridge, Tepakoaset, als Joe, Doe hereby acknowledge to have had and Received of and from the above named Thomas Penn, all and every the above mentioned parcells and quantities of Goods, and fifty pounds in money, being the full consideration for all and Singular the above Granted Lands and premises, and Doe acknowledge our Selves fully Satisfied and contented for the same, as

Witness our Hands,
Sealed and Delivered
by Sasoonan, Alalapis, Pesqueetom, Ohopamen, Mayemoe, Partridge & Tepakoaset, in the presence of
JAMES LOGAN,
THOMAS FREAME,
ISAAC MORRIS, Jun^r.,
ROBT. CHARLES,
PETER LLOYD,
W. PLUMSTED,
JAMES HAMILTON,
MORD. LLOYD,
JAMES STEEL.

SASOONAN alias ALLUMAPIS,
his x mark.
ALALAPIS, his x mark.
PESQUEETOM, his x mark.
OHOPAMEN, his x mark.
MAYEEMOE, his x mark.
PARTRIDGE, his x mark.
TEPA x KOASET,
mark.

Pa. Arch., 1st series, i, pp. 344-7.

¹ Confirmed in July, 1754; Smith, *Laws of Pa.*, ii, pp. 115, 116; *Pa. Arch.*, 1st series, i, pp. 494, 498. Penn MSS., *Offic. Corresp.*, vi; Gov. Morris to Sir William Johnson, Nov. 15, 1754.

the Delaware and the Susquehanna had been granted by Delaware chiefs, with an acknowledgment that the lands had been duly paid for, and that they had seen and heard read title deeds given under the hands and seals of their ancestors, by which the lands in question had been sold to William Penn. In this deed the indefinite language of early grants was avoided, and the northern limits were fixed at the Lehigh hills. Hence the northern limit of the "Walking Purchase," which would have extended beyond the Lehigh hills, was restricted to these hills. Ten years later, at a treaty held in Philadelphia, the entire deed was confirmed and the chiefs admitted that they had been paid.¹

It was contended by the opponents of the proprietary party in the province, that the territorial rights of the Six Nations were confined to the regions watered by the upper Susquehanna and its tributaries, and as they claimed no lands on the Delaware, they could not convey any there. The tract sold in 1732 comprised none of the lands on the Delaware or its branches, and certainly none at the confluence of the Delaware and Lehigh. Granting the authenticity of the deed of 1686, it had never been "walked." The land at the junction of these two rivers, or "forks of the Delaware" as it was called, was moreover several miles north of the tract specified in the deed of 1718. The Delawares of course had rights there. Hence, August 25, 1737, the proprietors obtained from them another release of the "Walking Purchase." The Indians also desired that it should be walked.² The walkers chosen by the proprietors were so expert that the Indians, who were unable to keep pace with them, complained of their rapidity. Furthermore a draft of the tract, made by the surveyor-general shortly after, included the best land in the "forks" of the Delaware. Hence the chiefs who signed the release of 1737 were unwilling to

¹ Smith, *Laws of Pa.*, ii, p. 113.

² *Pa. Arch.*, 1st Series, i, pp. 541-2.

leave the lands, or to give quiet possession to those who came to take them up.¹ They remonstrated, and threatened to defend their position by force. Accordingly, in 1741, a message was sent to the Six Nations urging them to compel the Delawares to relinquish possession of the "forks," and asserting that their coming to Pennsylvania was indispensable to the present peace of the colony.²

At this treaty, held with the Six Nations at Philadelphia in 1742, Gov. Thomas declared that, as they applied on all occasions to the Pennsylvania government to remove the white people who settled on lands before they were duly purchased, and in reference to such appeals proclamations had been issued to eject the intruders, they in turn should cause the Indians to remove from the locality named, and not give further disturbance to those now in possession. Canassatego, in the name of the rest, then severely censured the Delawares, stating that he had seen the deed signed by nine of their ancestors in 1686, as well as a release signed in 1737 by sixteen of themselves, and desired to know how they, being conquered subjects of the Six Nations, dared to sell any land whatsoever. In fact they had long since been paid for it, and now they appeared to want it again. He sharply criticised their deceitfulness in not informing the Six Nations of the sale, and for such dishonesty commanded them immediately to depart and abandon all claims to lands on this side of the river. They were bidden to go either to Wyoming or Shamokin, and never again to interfere in affairs concerning land. The command was

¹ The walk extended from Wrightsville to Mauch Chunk, a little over 60 miles. From this point a line was run to the Delaware, not at the Water Gap, but at the mouth of Lackawaxon Creek. This, not the length of the walk, was what made the dissatisfaction. Hoyt, *Syllabus of the Controversy between Connecticut and Pennsylvania*, pp. 15-16. But the subsequent complaints of the Indians were due far more to the presence of squatters than to any supposed injustice on the part of the walkers. Hazard, *Register of Pa.*, v, p. 339; vi, p. 209 *et seq.*, p. 337 *et seq.*

² *Votes*, iii, pp. 481-2.

obeyed, but the Delawares and Shawanese never forgot the disgrace they had suffered, and later wreaked a bloody vengeance.¹

In 1749 the proprietors for £500 purchased from the Six Nations all the territory beginning at the Kittatinny hills on the east side of the Susquehanna, which it will be remembered was the northern boundary mentioned in the deed of 1736, and running up the river by its course to the mouth of Mahanoy Creek, thence by a straight line to the Lehigh River, and thence to the mouth of Lackawaxon Creek. From this point the line verged eastward to the Delaware, and followed the river to the hills mentioned, and thence along the range of the hills, it returned to the place of starting.² At the Albany treaty, five years later, the proprietors for £400 purchased from the Six Nations all lands in Pennsylvania, extending north-west by west from the Kittatinny hills on the west branch of the Susquehanna to the limits of the province, thence southward to the southern boundary, thence by this boundary to the south side of the hills, and from that point to the place of beginning. In the deed it was also stipulated that whenever the region north and west of the Alleghany Mountains was settled, the Indians should receive an additional compensation. The purchase appears to have been fairly made, but it was undoubtedly one of the causes of the Indian revolt.³ The savages said that they did not under-

¹ It seems clear that the French gained over the Indians by the promise to restore to them their lands. *Col. Rec.*, v, p. 519 *et seq*; *Votes*, iii, p. 555, iv, pp. 492, 718 *et seq*; *Pa. Arch.*, 1st series, i, p. 629.

² Smith, *Laws of Pa.*, ii, pp. 119, 126; *Pa. Arch.*, 1st series, ii, p. 33.

³ In an address to Gov. Denny in June, 1757, the assembly stated that the Indian hostilities in great measure were due to exorbitant and unreasonable purchases made or supposed to be made from the Indians, and the manner of making them. *Votes*, iv, p. 718 *et seq*; *N. Y. Col. Doc.*, vii, pp. 18, 130, 169, 276.

If the Indians had had good cause for complaint against the proprietors, they would have made it at the preliminary meeting with the Six Nations at Carlisle in October, 1753. But the three Commissioners, Richard Peters, Isaac Norris and

stand the points of the compass, and if the line was run so as to include the west branch of the Susquehanna, they would never agree to it. Observation was made that the Connecticut claimants were then attempting to make surveys above Shamokin, and that this deed was intended to prevent their interference. But the only parts of the province apparently left open to the natives were either mountainous, or claimed by the Connecticut intruders. The territory sold included the hunting grounds of the Delawares, Shawanese, Nanticokes, Tutelas, and Ohio Indians. As a result, several of the tribes thus deprived of their lands joined the French, and the next year Braddock's defeat showed their resentment. Sir William Johnson then wrote to the Board of Trade, declaring that to surrender the deed of sale, and to settle the boundaries with the Indians, would be for the public service. To this the proprietors agreed, on condition that the Indians should not grant the lands to any one else.¹ They felt that their claims should be made good, but not at the expense of encroachment on what was viewed as Indian property. They also believed that, before the boundary line of any purchased tract was run, the Indians should appoint some of their own number to be present. Therefore at a treaty held at Easton in October, 1758, they gave up all claims to the region about the Ohio, north and west of the Alleghanies, and the Indians on their part

Benjamin Franklin, sent by the assembly to investigate the Indian grievances, made no mention in their report of any complaint by the Indians that they had been defrauded. Indeed, it is certain that no regular complaint against the proprietors ever was made by an Indian council. Some of the stragglers, when they wanted more rum, would find fault, asserting that they had been cheated. "This would always be the case as long as there were any Indians and as long as they could get rum." Such was the opinion of an interpreter thoroughly acquainted with the Indian character, and assuredly ought to have great weight in forming a judgment of the above transaction. *Col. Rec.*, vi, pp. 724-6, vii, p. 245; *Pa. Arch.*, 1st series, iii, p. 313, Conrad Weiser to Gov. Denny.

¹ P. L. B., v, T. P. to Johnson, March 12, 1757; to Peters and Weiser, Nov. 7, 1757.

agreed to settle the boundaries of the remainder. Indeed, so cautious were the proprietors not to offend the savages, that explicit instructions to this end were sent to the deputy surveyors.¹

We have seen from the record of Indian purchases that the lands whose possession was disputed by the savages, had been repeatedly bought by the proprietors. But the Delawares and Shawanese were still dissatisfied. Strenuous efforts were made to pacify them. In 1756 and 1757, conferences were held with their chiefs. Teedyuscung, one of the most prominent of the Delawares, claimed that the sale of 1737 was made with the understanding that the lands should be bounded by a line parallel to the course of the Delaware; but he asserted that instead the proprietors had had a straight line run with the compass. As by this act they were enabled to take possession of twice the quantity which the Indians intended to convey, he charged them with fraud, because they had altered and violated the terms of the deed. The proprietors immediately sent a commission to several persons to establish their innocence, and ordered the complaints of the Indians to be laid before the king. The assembly also sent a petition from Teedyuscung to the king, and Franklin the agent of the assembly at the time laid it before the Board of Trade.² The proprietors were called before that body to make their defence, and after all the evidence had been presented, the Board advised the king to refer the affair to Sir William Johnson.³ Orders to this effect were accordingly sent to Johnson. But Teedyuscung was displeased, for he was more inclined toward Gov. Hamilton whose public character was unimpeachable. A Delaware

¹ No warrants were to be granted until such a line was properly ascertained; and applications for lands near this line were marked "Quaere—if in the purchase." Smith, *Laws of Pa.*, ii, p. 122. *N. Y. Col. Doc.*, vii, pp. 377, 388; Penn MSS., T. P. to Peters, May 26, 1758, Jan. 9, 1761.

² Penn MSS., T. P. to Peters, Sept. 8, 1758, Feb. 10, 1759, and May 19, 1759.

³ *Ibid.*, June 7, 1759.

chieftain would naturally question the justice of a man whose interest lay particularly with the Six Nations, and whose influence over them was paramount. Nor were the Penns enthusiastic over the action of the home government. They felt that free and open conference was the best way to win confidence, and that it was not proper for Johnson to arbitrate between themselves and Indians who lived within the bounds of their province. But this could not prevail against the policy of the home government, which was then favorable to the assumption by itself of all control of Indian affairs as a department of defense. After several conferences at which Johnson presided, and in which various deeds and affidavits were produced, Teedyuscung admitted that he had received a portion of the purchase money for the land, though most of it had been given to the Six Nations.¹ He then withdrew the charge of forgery against the proprietors, but insisted that the "walk" had not been properly conducted. Still on June 28, 1762, he agreed to sign a release for all the lands in dispute.² On the other hand, no special reservation had been mentioned in the records and documents describing the property of the Delawares, but at their own request they were allowed to remain upon the land at Wyoming so long as they choose to occupy it. But in case they wished to depart, the proprietors reserved the right immediately to grant it to white settlers. In fact the proprietors had no desire to force the Indians to leave, and were willing to reserve for them at a suitable distance from the settlements of the whites land sufficient in quantity for hunting or cultivating.³ The last purchase made by the proprietors from the Indians, took place at Fort Stanwix

¹ The proprietors were assuredly not obliged to ascertain what other claimants existed after the principals had been satisfied; but they thought the Six Nations ought to have been more generous in their apportionment. *Ibid.*, Feb. 10, 1759.

² *Ibid.*, Aug. 10 and Sept. 10, 1762; *Pa. Arch.*, 1st Series, iv, p. 85.

³ *Ibid.*, Feb. 10, 1759.

in 1768. Here for a consideration of \$10,000, they obtained from the Six Nations all of Pennsylvania, not hitherto purchased, nearly as far west as the Ohio, but within minutely specified bounds. At the same time they gave \$500 for the lands of the Conestogoe Indians, who had been murdered by frontier ruffians several years before.¹

This concludes the sketch of the actual purchases from the Indians. We see how the proprietors repeatedly bought the same territory. As a general rule also their officers did not grant lands beyond the limits of the tracts purchased.² Hence all insinuations about unfair practices on their part were without foundation.

Let us now consider the management of Indian affairs as more particularly affecting the regulation of Indian trade, the encroachment of the whites and the settlement of boundaries. At the outset Penn had refused a very lucrative offer for the monopoly of the Indian trade, because he feared that his kindly treatment of the savages would not be imitated by the traders.³ But he recognized the necessity for some regulation of the traffic. Several laws on the subject were passed, but as a rule attempts to check by legislation the sale of rum, the debauching of the Indian women, and other excesses were ineffectual. This was mainly due to the reckless conduct of the traders, and to the natural weakness of the Indians for spirituous liquors, although it is true that the Indian chiefs not infrequently complained of the indiscriminate sale of rum.⁴ Considerable uncertainty prevailed, however, as to the wisdom of allowing the savages the use of liquor in limited quantities. Penn himself was accustomed to give the chiefs a small quantity whenever he held a treaty with them, and was not unwilling that the Indians should buy liquor, provided they would

¹ *N. Y. Col. Doc.*, viii, pp. 126, 133.

² *1 Binney's Reports*, p. 248,

³ Hazard, *Annals of Pt.*, p. 522.

⁴ *Pa. Arch.*, 1st series, i, pp. 425, 549-552.

submit to the usual penalties for drunkenness.¹ At a session of the provincial council in 1701, at which Penn was present, the project of forming a company to take charge of the Indian trade was broached. It was suggested that the traders in their transactions should set the Indians a good example, and that care should be taken to instruct the savages in the principles of Christianity. It was also agreed that no rum should be sold, except to the Indian chiefs, and then only in limited quantities.² But the project failed at that time. Then complaints arose that persons from other provinces traded with the Indians, and, by making them intoxicated, succeeded in fraudulently depriving them of the very means of existence. Thereupon a law was passed in the same year forbidding non-residents to trade with Indians in the province, and at the request of several chiefs, it was further provided under heavy penalties, that no rum should be carried into the Indian villages. As proofs of such private dealings were often wanted, the statement of one professed Christian was deemed sufficient.³ But the trade with the Indians continued to be carried on by the most abandoned part of the community. The great quantity of liquor consumed by the savages rendered them intractable and quarrelsome. The traders, living as they did beyond the restraints of law, by their own intemperance, by the frauds they practiced, and by their other irregularities contributed much to estrange the Indians. To guard against these abuses, and to promote a continuance of the friendship Penn had established, a law was passed in 1715, providing that persons who had injured a peaceable Indian should be subject to the same penalties as if the injury had been committed against a white man. On the other hand, offenses committed by the Indians were similarly dealt with. Furthermore, persons who, on the testimony of credible Indians, were con-

¹ *Charter and Laws of Pa.*, p. 169.

² *Col. Rec.*, ii, pp. 19-21.

³ Bradford, *Laws of Pa.*

victed of spreading false news tending to alienate the savages, or to create fear among them, were subject to fine and imprisonment. No one was to be allowed to trade with the Indians, unless he was recommended by the county court to the governor for a yearly license, and furnished security for his reputable conduct and observance of the laws of the province. Freeholders, however, were permitted to buy goods from the Indians, but only for private use. As the debauchery among the savages did not seem to be much lessened, in 1722 it was enacted that trade with the Indians should be carried on within a settled township, and at the house of the trader. Not more than one gallon of rum should be carried beyond the settled portions of the province, and none should be sold except under the somewhat absurd condition, that a half gill might be given to an Indian by any person within his own home once every twelve hours. At treaties, however, the governor and council could do as they saw fit.¹ As these acts were of brief duration, but little good could be expected from them. Then, as the influence of the Quakers waned, those who were sent to enforce the laws readily connived at fraud and deceit. The proprietors believed that all measures of reform must fail, unless people of excellent character were alone permitted to settle near the Indians. They also recommended that trading should continue to be carried on under licenses from the governor, and that missionaries should be sent among the savages. They were somewhat interested financially in the trade, but they forbade their officers to engage in it. But little regard, however, was paid to these suggestions, since by the middle of the eighteenth century, the Indians had come to despise the government of the province because of its apparent weakness, and only a display of authority could awe them into submission.²

¹ Bradford, *Laws of Pa.*

² Penn MSS., *Supp. Proc.*, T. P. to Peters, Feb. 20, 1748, May 13, 1750, March 18, 1752; *Correspondence of the Penn Family*, R. Hockley to T. P., June 26, 1756.

The assembly by that time saw the necessity for governmental control of the Indian trade, and in 1758 a law was passed appointing nine commissioners for Indian affairs. They were made accountable to the assembly, and were given a percentage on the transactions. Agents at specified localities conducted the trade, subject to the directions of the commissioners, who were forbidden to engage in it either personally or in behalf of others. They supplied the agents with goods out of a capital stock appropriated by the assembly, and were empowered to borrow further sums in case the trade should prove lucrative. But if the profits were insufficient to pay salaries and interest, a provincial tax should be levied to meet the deficiency. When the goods were sold, the prices should be so regulated as to defray only the necessary expenses of the traffic, and the support of Protestant schoolmasters and missionaries; but any surplus that might accrue should be disposed of by the assembly. Finally, stringent measures were enacted against the sale of liquor to the savages, and private persons were restricted to trade conducted exclusively at their homes. The following year the capital stock and percentages were increased. But in 1763 the commissioners were ordered by the assembly to sell the stock, as trade was impossible on account of Indian hostilities. Seven years later, however, commissioners were appointed to confer with delegates from the neighboring colonies for the purpose of agreeing upon a general plan for the regulation of the Indian trade. The advent of the Revolution of course prevented any such plan from being carried into execution.

Whenever the Indians sold land, it was understood that the whites should not settle or encroach upon their hunting grounds. In fact, every attempt to settle on such lands was attended with complaint and uneasiness on the part of the savages. William Penn of course never allowed any land to be settled until it had been purchased from the Indians, and we have seen that his sons, so far as possible, followed this

policy. Indeed, by an act passed in 1700 private persons had been forbidden to buy lands from the savages without the permission of the proprietor. But it was a common practice for private individuals to settle not only on land which had not been purchased from the Indians, but on that for which they held no title from the Penns; also to take land on lease from the savages, or to bargain with them for the pasturage, timber, and mines. In an act passed in 1729 the practice was strongly condemned as unjust to the proprietors, and dangerous to persons who were properly entitled to take up land. Hence it was enacted that the law of 1700 should be rigidly enforced according to the rules prescribed in the English statutes concerning forcible entries and detainers. But the frontiersmen were not readily driven from their settlements. Consequently, the proclamations of governors, and the resolutions of the assemblies, that "for the peace of the country it was just that the Indian grievances should be removed," were often no more effective than the paper on which they were printed. The settlers continued to encroach, and gradually made their way to the fertile region in the "forks" of the Delaware. In 1728 the neighboring Indians prepared for war. Thereupon the proprietary officers desired them not to injure the settlers, but to wait until the matter could be adjusted. The savages submitted, but the encroachments continued, and they renewed their complaints.

The representatives of the Six Nations in 1742 remarked that the lands of the proprietors did not extend beyond the Kittatinny hills, but that white people had settled there and spoiled the hunting. They therefore asked that the squatters be ejected. Though Gov. Thomas stated that officers had been sent to stop such illegal proceedings, the Indians declared that these officers did not properly attend to their duties, and that, so far from ejecting the offenders, they made surveys for themselves, and were in league with the trespassers. They demanded that more effectual means and more

honest men should be employed. They asserted, moreover, that they had given the land bordering on the river Juniata to the Delawares, Shawanese, and Nanticokes, as a hunting ground, and requested that the squatters in that region also should be immediately expelled. Again, at a meeting of deputies from the Six Nations held in 1749, Gov. Hamilton was told to remove the trespassers from this territory, or disastrous results might follow.¹ Thereupon directions were speedily sent to check the evils, but as usual, owing to the strength of the frontiersmen, little was accomplished.² It was generally understood that the Six Nations should be consulted on all business that concerned the Indians. A meeting was therefore held at Carlisle in 1753. Many of the sachems attached to the British interest were dead, while the chief sachem at the conference was known to be inclined toward the French. Again the deputies censured the government because of its delay in taking effective measures to stop illicit settling. The following year under orders from the king, the famous conference with the Six Nations was held at Albany, and extraordinary efforts were made to preserve the friendship of the Indians. The Board of Trade at this time also recommended that, if practicable, all the provinces should be comprised in a general treaty to be made in the king's name; for, it declared, the conclusion of separate treaties by the individual provinces was improper, and likely to be attended with great inconvenience to the royal service. Moreover, the Board viewed the separate negotiations by the assemblies with the Indians as a distinct usurpation of the prerogative of the crown.³

During the progress of the treaty, and even prior to it, a dispute arose between the assembly and the proprietors. We

¹ *Col. Rec.*, iv, p. 560 *et seq.*; v, pp. 398-440.

² *Votes*, iv, pp. 137, 509, 517, 528; Penn MSS., *Supp. Proc.*, T. P. to Peters, Oct. 9, 1749.

³ *Ibid.*, pp. 151, 279, 280, 286, 509, 517, 528; Penn MSS., T. P. to Peters, June 11 and July 3, 1755.

have seen that it had been the custom for the governor and council, or members of the latter, to manage all negotiations with the Indians. But gradually, after the assembly had begun to make appropriations for presents, the governor and council while recognized as the proper agents in such affairs, were deprived of some of their exclusive power. The house either gave directions concerning the disposal of the money, or was represented by committees at the conference. It even went so far as to attempt completely to control Indian affairs by such committees, thereby assuming to itself the rightful authority of the executive. Not till about the middle of the eighteenth century, however, did the expense of Indian negotiations assume serious proportions. Then the assembly, having spent upwards of £8,000 for this purpose, began to feel that the proprietors ought to bear a part of the charges arising from such negotiations and treaties. The Penns replied that, since they regularly paid the interpreter, and had given the Indians the proper amount of money for their lands, they did not consider themselves under any obligations to contribute additional sums. As it was a case of public expenditure, they believed themselves to be no more liable than governors of other provinces. But the house contended that the cultivation of friendship with the Indians would redound to the special advantage of the proprietors, and that for the attainment of this object larger contributions were necessary. Hence, even though the Penns might be under no legal obligations, they were equitably bound to lessen the burden of the people. In fact, as owners of the soil and as governors, they should bear all the expenses involved in the conclusion of treaties which were of a territorial character.¹ But the proprietors remained obdurate.

In this connection, it may be said, that we have found no good evidence to prove that the proprietors had wronged the Indians. But the contrary was intimated by the

¹ *Votes*, iv, pp. 264, 361-2; *Pa. Arch.*, 1st series, ii, p. 108.

"Friendly Association," a band of Quakers who had united for the purpose of quieting the troubles with the savages. Its interference, however, was condemned by the home government, as well as by the proprietors. Its intentions may have been praiseworthy, but the methods employed by some of its members suggested the thought that personal and political schemes¹ would be promoted. Indeed, the proprietors refused to approve of its proposal that commissioners appointed by the Quakers should treat with the Indians. Their reason for this was that the Quakers refused to admit the rightfulness of the claim of the Six Nations to the territory then under consideration, a claim which of course rested solely on conquest. By their interference at this juncture it was believed that contention would be aroused anew between the Six Nations and the Delawares.²

Whatever was the opinion of the Quakers concerning the complaints of the Delawares, the Six Nations at the treaty in 1754 thought the defection of the tribes in Pennsylvania was due chiefly to the presence of the squatters, and to the fearful slaughter of Braddock's army, as thereby the reputation of the French was increased, and the want of union among the English made apparent.³ Hence, in 1760, the assembly passed a law providing heavy penalties against hunting beyond the limits of territory purchased by the proprietors. During Pontiac's war, also, orders were sent from England to Gen.

¹ "Letter from a Gentleman to his Friend in Philadelphia, 1764." "If the motives that induced the Friends to subscribe toward the settlement of the differences with the Indians, were what you believe them to be, such deserve our praise and thanks instead of censure, and I am sure will always meet with my regard. I make no doubt that many of the hot-headed party men be among them. Yet there are many others whose intentions are for the general good, and who desire to have these Indian differences settled in a just and reasonable manner." P. L. B., v, T. P. to W. Logan, Dec. 9, 1757; to Peters, May 26, 1758.

² *Col. Rec.*, vii, p. 658; *Votes*, iv, p. 800; Penn MSS., T. P. to Peters, May 26, 1758; to Gov. Denny, April 13, 1759.

³ *Ibid.*, vi, p. 111 *et seq*; vii, p. 245.

Amherst and Sir William Johnson to remove all trespassers on the Indian lands. To this end, in 1767 Gen. Gage notified Gov. Penn that effectual means must be immediately taken to drive out the lawless settlers.¹ Little attention, however, was paid to the governor's proclamation, and even the removal of squatters by the garrison of Fort Pitt gave only temporary relief, because, unless deterred by severe punishment, they kept returning in steadily increasing numbers. It was also seen that no progress toward a peaceful solution of the question could be made with defective laws, or without the exercise of the coercive powers of government. The settlers, as well as the Indians, must be kept in order. Hence Gen. Gage promised the civil officers the aid of the troops in suppressing the disturbances on the frontier. Also, in the early part of 1768, the assembly enacted a law making death without benefit of clergy the penalty for trespassing on Indian lands, while even surveying or marking trees on such lands should be visited with heavy punishments. This rigorous treatment was softened by an act of the following year, making such acts of trespass a crime punishable by a fine of £500, and a year's imprisonment.² Finally, the assembly sent orders to its agents in England to obtain, if possible, a command from the crown for the establishment of a boundary line between the Indians and the province, pledging at the same time a gift of £3000 to the savages to remove their discontent.³ Instructions for this purpose were sent, and in 1768, at Fort Stanwix, a conference

¹ It is important to note how the progress of events had served to dispel the visionary ideas of early times concerning the nobility of the Indian nature, and to reveal it in its actual savagery. William Penn's humanitarianism stands in bold contrast to the stern decrees of a later time, when the province was forced to endure the sufferings of an Indian war. Gov. John Penn issued a proclamation, July 7, 1764, offering bounties for the lives or scalps of all Indian enemies, whether male or female, adults or children.

² Miller, *Laws of Pa.*; *Votes*, vi, p. 33; Penn MSS., *Offic. Corresp.*, x, John Penn to T. P., Jan. 21, 1768.

³ *Votes*, vi, p. 51.

was held which was attended by commissioners from New York, New Jersey, Pennsylvania, and other colonies.¹ In connection with this meeting, Sir William Johnson made large purchases from the Indians preparatory to the settlement of boundaries.²

The fact that the home government had assumed such complete control over Indian affairs caused the proprietors to fear lest their border territory might be seized by the crown under pretext of pacifying the savages. But this was not done, and the treaty at Fort Stanwix brought to a close the Indian troubles of the proprietary period.

¹ Penn. MSS., *Offic. Corresp.*, xi, R. Peters to T. P., May 15, 1774.

² The proprietors thought it was far better to have fixed the boundaries with the Indians, and secured a deed from them, than to have been compelled to negotiate with the English treasury for part of the lands comprised in a general deed made to the crown. P. L. B., ix, T. P. to Tilghman, Jan. 31, 1769.

CHAPTER VII

BOUNDARY DISPUTES

I

Maryland

THE history of this famous contest concerning the location of the boundary line between Maryland and Pennsylvania and the possession of the Lower Counties, has never been exhaustively written. Short treatises as a rule have failed to indicate clearly the nature of the dispute and the exact points in controversy. The treatment of this question properly involves a discussion of the territorial grants by charter from the king, and of the deeds of enfeoffment granted by the Duke of York. Connected with this discussion also are the disputes about the location of the fortieth degree of north latitude, and the significance of the words "*hactenus inculta*." Then we shall consider the agreement of 1732, and the uncertainty about the situation of Cape Henlopen. Finally the decision of the chancellor, and the subsequent proceedings of the commissioners until the line was definitely settled in 1767 will be examined.

We have seen that by the charter of 1681 Penn was entitled to all the section of country bounded on the east by the Delaware, from a point twelve miles north of the town of Newcastle, to the forty-third degree of north latitude. On the south, it was to be bounded by the circumference of a circle whose centre was Newcastle and whose radius was twelve miles in length, and which was drawn from north to west till it reached the beginning of the fortieth degree. From this

point of contact, the line was to extend directly westward to the limit of longitude. The charter of Maryland, bestowed upon Lord Baltimore in 1632, specified that his territorial grant should include a part of the peninsula between the ocean and Chesapeake Bay, and be divided from the rest of that peninsula on the south by a line drawn from Watkin's Point on the Chesapeake to the ocean. From this southern limit the eastern line should follow the coast northward to that part of Delaware Bay which lay under the fortieth degree north latitude, where the grant in 1620 to the New England Council ended. The northern limit of the grant was the fortieth parallel which it followed as far west as the "true meridian of the first fountain of the river Potomac." From this point the boundary line turned in a south-easterly direction to the eastern bank of the Potomac; following thence the course of the river, it was to terminate at a place called Cinquack, now Smith's Point, near the mouth of the Potomac. The southern boundary was completed by the shortest line from Cinquack to Watkin's Point.

As early as 1623 Fort Nassau was founded by the Dutch on the east side of the Delaware River, but three years later it was abandoned. In 1629 and 1630 two tracts of land on Delaware Bay were purchased by members of the Dutch West India Company, and in 1631 a settlement called Swaanendael was made.¹ This was destroyed by the Indians early in the following year.² Hence at the time of the grant to Baltimore only roving bands of savages, or possibly a few Dutch traders, inhabited the region.³ In 1638, however, the Swedes took possession, and remained in authority till 1655, when they were subdued by Stuyvesant and the Dutch. Again in 1664 this territory, as well as New York, fell into the hands of the English.⁴ Thereupon Charles II, by letters

¹ Hazard, *Annals of Pa.*, pp. 23, 24.

² *Ibid.*, pp. 25-28.

³ Brodhead, *History of New York*, i, pp. 200-6, 213, 219.

⁴ Hazard, pp. 364-5.

patent dated March 12, 1664, and June 29, 1674, granted to his brother James, Duke of York, a large part of this conquest ; but it was specified that the western territorial limit of the grant should be the Delaware River. Inasmuch as the "country of Newcastle," as it was generally called, had been governed by the Dutch authorities at New Amsterdam, the duke's officers assumed control on the ground that it was an "appendix to New York," though legally he had no title to it.¹ Penn desired to control the navigation of the Delaware. Hence with some difficulty he obtained from the duke, August 24, 1682, deeds of enfeoffment for the country of Newcastle, or the three Lower Counties on the Delaware. By these he was granted the territory between the northern point of the circumference of the circle mentioned in the charter of Pennsylvania, and the latitude of what was called Cape Henlopen.² On October 28, 1682, Penn demanded of certain persons appointed by the duke that the terms of the deeds should be fulfilled. He was thereupon given quiet possession and seisin by delivery of the fort at Newcastle, a porringer of water from the Delaware, a piece of turf and a twig in token of his right to the soil. Upon his assurances that their rights would be respected, the people promised obedience. Moreover, although the duke's title was defective, and although it was a principle of English law that rights of government could emanate only from the crown, nevertheless, as rights of government had been exercised, the governor and council of New York, in November 1682, issued a proclamation that due submission should be made to Penn. It had been stipulated in the deeds that the duke should confirm this enfeoffment. He, therefore, applied to Charles for an express grant of the Lower Counties. By letters patent dated March 22, 1683, he was given all the

¹ The duke's attorney admitted that the title of his noble client rested not on his charter, but on the king's acquiescence. *Ibid.*, p. 476; *Documents Relating to Colonial History of New York*, iii, pp. 239, 247.

² Hazard, pp. 521, 588.

territory between New Jersey and Maryland, as far south as Cape Henlopen, and full powers of government, with a reservation of appeals to the crown. Not satisfied with this, and probably in pursuance of his agreement with Penn, for whom, as is well known, he had a strong personal regard, he gave up this charter, and petitioned the king for a further and more beneficial grant. This it seems was in course of preparation when it was stopped by a counter petition from the agents of Baltimore. The docket of the intended grant ran as follows: "A bill signed by R. Sawyer (the attorney-general) and now remaining in the signet office, containing the king's grant to the Duke of York in fee, which recites that the Duke of York had surrendered to the king the letters patent dated March 22d, last, which surrender his Majesty had accepted and thereby did accept. Therefore, the king, of his especial grace, certain knowledge and mere motion grants to the Duke of York in fee, April 13, 1683, all that town of Newcastle, otherwise called Delaware, situate, lying, and being between Maryland and New Jersey, and all that river called Delaware, and soil thereof, and all islands in the said river, and all that tract of land upon the west side of the river and bay of Delaware, which lieth from Schuylkill Creek upon the said river, unto Bombey's Hook, and backwards into the woods so far as the Minquas country, and from Bombey's Hook on the same river unto Cape Henlopen, now called Cape James, being the south point of Asea Warmett inlet, and backwards into the woods three Indian-day's journeys, being formerly the claim or possession of the Dutch, or purchased by them, or which was by them first surrendered to Colonel Nicholls, and which hath since been surrendered to Sir Edmund Andros, and hath for several years been in possession of the Duke of York." The quit rent was to be one beaver skin, delivered annually; and the charter was to be good, notwithstanding "any former letters patent for the premises, or any part thereof, granted by progenitors unto any

person or persons whatsoever." Lastly, it was endorsed "Expeditur apud West Monaster decimo sexto die Aprilis Anno regis Caroli Secundi Tricesimo Quinto per Morice."¹

Such a grant assuredly would have conflicted with that of Pennsylvania, especially with regard to the Delaware river, while it would deliberately set aside Baltimore's claims. It seems likely therefore that it was the duke's intention to leave no space intervening between Maryland and Pennsylvania. Though this grant was registered in the books of the Hanaper Office, if it did not as a charter pass the great seal, it is doubtful whether the duke's surrender of his patent of March 22 was binding. Such a construction of the case would leave him in possession of the Lower Counties, thus apparently violating his contract with Penn. Moreover, if the duke's title should be determined merely by the words of the charters he received from the king in 1664 and 1674, the deeds he gave Penn were not legally valid, because he was giving up land which had never belonged to him, though the grant subsequently made to him in March 1683 was good. Admitting, however, that his title by charter based on conquest was valid, and that his deeds to Penn were therefore valid, then his letters patent of March 1683 conferred merely the powers of government, for it is not to be supposed that any subsequent grant from the king could invalidate a private contract. But this would be such an irregular proceeding, that it is safer to assume that it was the duke's purpose to secure the grant from Charles for Penn's benefit, and that Penn had agreed to the plan. This view of the case is borne out by the fact, that the patent of March 1683 was transferred by him to Penn as a security until he could make a further confirmation of his deeds.²

In a letter to some friends, written June 10, 1691, Penn as-

¹ Penn MSS., *Charters and Frames of Government; Breviat of Evidence*, Penn and Baltimore, p. 58.

² *Breviat*, p. 56.

serted that the duke, after becoming James II., had given him a charter for the Lower Counties.¹ His assertion was true only in part, because the grant never passed the great seal. It seems that on December 10, 1688, the day before James fled from Whitehall, the solicitor general, acting under his orders, prepared this charter.² In the preamble it was stated that the king had intended to grant to Penn all the territory east of a line of division made by an order in council dated November 7, 1685, and that Penn had been advised that the indentures of August 24, 1682, gave him no right to exercise any power of government. It was also declared that Penn had promoted liberty of conscience, and that, according to the terms of the indentures, he might be required to pay the king half of the profits from the land; but that he could not collect rents on account of the disturbances created by Baltimore and his agents. Hence, in order that Penn should not be called in question, and should not fall within the reach of any law, or be liable to prosecution for any crimes or offenses which he might have committed in assuming jurisdiction over the Lower Counties, he was released from the payment of rents and profits, and pardoned any felony or treason involved in such assumption of authority. Furthermore, for a consideration of ten shillings, he was granted all the eastern half of the territory between the "the eastern sea, river and bay of Delaware, and Chesapeake Bay," as divided by the order in council just mentioned. Of this Penn was made true and absolute proprietor. The territory should be held as of the castle of "New Windsor in our county of Berks in England," at a quit rent of one beaver skin. It was to be erected into a province and seignior, and to be called Lower Pennsylvania. Penn could pardon all crimes except treason. To all people, except such as should be specially forbidden, was given the liberty of transporting

¹ Gordon, *History of Pa.*, p. 601.

² Penn MSS., *Charters and Frames of Government*.

thither their persons and property. The people should hold their land of Penn as of the seignory of Newcastle, by such rents, customs and services as should seem to him fit. If the inhabitants of Lower Pennsylvania so desired, it might be united with Pennsylvania, in order that they might have one assembly; and if the laws of England and Pennsylvania would allow it, the one assembly might legislate for both. Penn, his heirs and assigns, were given the same powers of legislation in this territory as existed in Pennsylvania. Except that nothing was said about the king's right to one-fifth of royal mines, this charter was very similar to that of Pennsylvania. Its failure to pass the great seal once more shows the title of the duke, and through him of the crown by the charter of March 1683, to be valid unless some other claims existed.

Baltimore's charter was the great obstacle in the way of the perfection of the duke's title. But in order to understand this more fully we must endeavor to establish the location of the fortieth degree, and the meaning of the phrase "which lieth under," as found in the Maryland charter, and the phrase "unto the beginning of the fortieth degree," as found in the Pennsylvania charter, taking into consideration the fact that Baltimore's charter antedated Penn's by forty-nine years. At the outset it must be borne in mind that accurate geographical knowledge or calculation was at that time very rare. In 1680, when Penn was negotiating for his grant, the agents of Baltimore petitioned that the grant should lie north of the Susquehanna fort, as that was believed to be on the northern boundary line of Maryland. To guard against any encroachment they asked also that they might see the grant before it passed the great seal. To the proposition concerning the Susquehanna fort Penn agreed. There appear, however, to have been two forts of that name in this region; but the situation of the one probably alluded to in 1680 was at the junction of the Susquehanna River and Octorara Creek, almost directly west of New-

castle. It was thus on the fortieth parallel. Also, the attorney general, to whom the matter of the boundary was referred, stated his belief that the Lower Counties were separate and distinct from Baltimore's grant, but confessed that the lines were very uncertain. He bounded Maryland on the south by Virginia, on the east by the ocean and Delaware Bay, and on the north by the part of the Delaware river which lay under the fortieth degree, and thence by a straight line westward. But he was somewhat undecided as to whether the Dutch and Swedes owed obedience to the duke or to Baltimore.¹ This would seem to show that by charter Baltimore was entitled to the Lower Counties.

Again, from the identity of names and localities there is little doubt that Capt. John Smith's map of 1624 was used to determine the territorial limits mentioned in the charter of Maryland. By this it appears that the fortieth parallel crossed the Delaware at a point where it would perhaps be difficult to distinguish between bay and river. West of that it crossed the place where Newcastle later stood, and passed near the head of Chesapeake Bay and the sources of the Potomac. According to this calculation then, the thirty-ninth parallel would intersect a point about two miles south of the present Cape Henlopen, and ten miles south of the city of Washington. If the words "up to that part of Delaware Bay that lieth under the fortieth degree," refer to the fortieth parallel, assuming that the point where it crossed the Delaware was within Delaware Bay, it would again appear that the grant to Baltimore embraced the territory of the Lower Counties.

If, however, the words refer to the space of sixty geographical miles which lie between the thirty-ninth and the fortieth parallels or near the foot of Delaware Bay which lies south of that space, an absurdity is apparent, because no part of Delaware Bay was south of the space 40°. In this connection it

¹ Hazard, pp. 475-480, 482, 484; *Breviat*, p. 51; Map prefixed to the printed agreement of 1732.

was contended by the Penns in their suit in chancery, that the expression, "as far northward as that part," found in the Maryland charter, meant up to the fortieth degree, but excluding all lands lying within the space of the fortieth degree. As no part of Delaware Bay lay within or under the space of the fortieth degree, very little of the territory of the Lower Counties lay south of the thirty-ninth degree, *i. e.*, south of the thirty-ninth parallel. They urged also that the fortieth degree complete extended beyond where the grant to the New England Council ended. But the fallacious character of this argument becomes evident when we remember that, if the northern boundary of Maryland were thus located at the thirty-ninth parallel, it would fall sixty miles south of the head-waters of the Potomac, and would give Baltimore only the narrow territory between the thirty-eighth and the thirty-ninth parallels. Moreover, the bounds of New England did not extend even so far south as the fortieth parallel. If the words, "lieth under," are taken literally, as if a huge figure 40 lay over sixty geographical miles, then "up to that point of the Delaware Bay that lieth under the fortieth degree," would have the same meaning as in the first case, because all of Delaware Bay was under the fortieth degree. This may seem to be an absurd argument, but it was in fact the very one used on several occasions by Baltimore. For example, in the answer to the Penns' bill in chancery, he stated that his boundaries extended through the fortieth degree complete, and to the end of it, *i. e.*, from the thirty-ninth parallel to the fortieth parallel, and that no part of the lands under the said fortieth degree was excluded from the grant. He declared that the distance from the thirty-ninth degree complete, *i. e.*, at the thirty-ninth parallel to the fortieth degree complete, *i. e.*, at the fortieth parallel, was sixty geographical miles, and that "there was such a quantity or space of land" lying *under* the fortieth degree. Finally, he asserted that all lands under the fortieth degree had been granted to him, and

"not such lands, or so far only as extended or adjoined the said fortieth degree."¹

The Penns claimed that the phrase, "beginning of the fortieth degree," had reference to the entire space between the thirty-ninth and the fortieth parallels.² This would make the southern boundary of Pennsylvania the thirty-ninth parallel, whereas by the charter the southern limit was the straight line beginning twelve miles from Newcastle. The use of the word "beginning" was most unfortunate, for had the words been "twelve miles distant from Newcastle to the fortieth degree," the meaning would have been clear, as the fortieth parallel was believed to pass through Newcastle. In fact the charter itself admits that the forty-third degree and the beginning of the forty-third degree were the same, for it states that the province should be bounded on the east by the Delaware River from the point twelve miles north of Newcastle *to the forty-third degree*, and on the north by the *beginning* of this degree; we are certainly at liberty then to assume that what was true in the one case was true also in the other, and that the fortieth degree and the beginning of the fortieth degree were used in the charter as synonymous terms. Had this been observed, the contest over what was meant by the beginning of a degree must have soon ceased, to the discomfiture of the Penns.

¹ *Breviat.*

² It seems hardly accurate to speak of the beginning of a degree, but if, for example, we take the space between the equator and the first parallel, its beginning is obviously at the equator and its end at the first parallel, as in the computation of time every second after 1800 is called the 19th century. Hence the space of the fortieth degree would be the section between the thirty-ninth and the fortieth parallels. Indeed Baltimore in this same reply to the bill in chancery claimed that the grant of Maryland included all lands up to the fortieth degree, and that such an expression would be improperly applied to any region other than the full extent of the degree, because, until it came to the extent of the degree it would be only 39° 59', and so many seconds. But the Penns observed that 39° 59' was under the fortieth degree. So also, rejoined Baltimore, was 39° 1', and every hair's breadth from 39° complete to 40° complete, as *e. g.* 90' was under the second degree, for it was beyond the extent of the first degree. *Ibid.*

After having thus disposed of the location of the fortieth degree according to the geographical knowledge of the 17th century, we may consider the meaning of the phrase in the Maryland charter, "*hactenus inculta*," etc., "hitherto uncultivated" in the parts of America, and partly occupied by savages. In the first place, these words occur only in the preamble, and form no part of the territorial grant proper. But as already stated, the settlement established by the Dutch previous to 1632 had been abandoned when the Maryland charter was issued. Subsequently, however, the Dutch resumed possession and the Swedes had taken up land. Still although Baltimore was given the power to wage defensive war, even had circumstances allowed him so to do, he would scarcely have dared to involve himself in a conflict with the Swedes or Dutch, when Sweden and Holland were at peace with England. Thirdly, as early as 1635 a map drawn according to his direction shows that he believed the northern line of Maryland extended from about twenty-five miles west of the Susquehanna to five miles south of where Newcastle later stood.¹ This indicates that he regarded the fortieth parallel as his northern boundary, and in this belief he sent several messages to the Dutch, warning them to cease exercising jurisdiction over territory that was his by the terms of his charter.²

In this connection it may be remarked that the claim set up by the Penns to the effect that the king could not grant any of the territory held by the Dutch, because it had not been discovered by English subjects, is weakened by the fact that the grant by James I. to the London patentees in 1606, embraced the region in question and was based on the discovery made by the Cabots. On the other hand, previous to the time when

¹ Map prefixed to the printed agreement of 1732.

² In 1660 he ordered his attorney, Capt. Neal, to protest in Holland against the encroachments of the Dutch, and to demand their surrender of the region. Hazard, pp. 258 *et seq.*, 317, 327.

the region was conquered by the English, Baltimore had not exercised jurisdiction over it. For this reason his title may be regarded as defective. Still it is true that Penn's title, as derived from the Duke of York, was far less valid.

Let us now trace the events leading up to the agreement of 1732. Penn, soon after his arrival in Pennsylvania, arranged a meeting with Baltimore. At this conference he presented a letter from the king, dated April 2, 1681, stating that, as Baltimore had only two degrees, he should measure from Watkin's Point northward, 60 miles to a degree, and ordering both parties to appoint commissioners to determine the boundaries. According to Smith's map, Watkin's Point lay between 38° and $38^{\circ} 10'$, and 120 miles north of this would locate the northern line of Maryland near the centre of Newcastle. Baltimore replied that the king was mistaken, and that he would not allow his patent to be questioned by any such means. Penn thereupon declared that in 1680, when negotiating for the grant of Pennsylvania, he had petitioned the king at first for five degrees of latitude, but because some of the members of the Privy Council reminded him that Baltimore had only two degrees, he had agreed to a grant of three degrees. He further intimated that in Baltimore's charter the presumption was that Watkin's Point was in latitude 38° , else Virginia, since it should extend to the 38th degree, would suffer encroachment. Baltimore did not favor this proposition of the two degrees. Then Penn pressed him to measure two and one-half degrees from Watkin's Point, and if he would consent to do this on the estimate of sixty miles to the degree, the southern boundary of Penn's province should be at the fortieth parallel, wherever it might fall. Ignorance of the distance from Watkin's Point to Newcastle, as well a cautious policy to avoid anything that might resemble an admission of Penn's claims, caused Baltimore to decline this very advantageous offer. A line 150 miles north of Watkin's Point would have fallen nearly twenty miles north of Philadelphia, and had Penn been better aware of the topo-

graphy, he would never have made such a blunder. Other conferences followed, but without result. Thereupon Baltimore issued a proclamation offering land in the disputed region at lower prices, and in greater quantities than Penn was disposed to concede. He told Penn, however, that this was done merely to renew his claim, not with any intention of encouraging settlement, still he refused to recall the proclamation when requested so to do. Penn hinted that he might be made accountable to the king in council. Baltimore laconically rejoined that he had nothing to do with the king and council, and would take his right wherever he could get it. Pursuant to this, in 1683, he had a line surveyed from the mouth of Octorara creek, at which spot he built a log fort, north east to the arc of the circle twelve miles from Newcastle. This was six or eight miles north of his predecessor's line of 1635, which it will be remembered was nearly coincident with the fortieth parallel.¹ Thereupon Penn, despairing of any peaceable agreement, wrote to the Committee of the Council for Plantation Affairs. He rehearsed the outcome of his conferences with Baltimore. He protested against Baltimore's version of them. He asserted that the land included in the patent of Maryland was only that inhabited by savage tribes, and that Baltimore had never taken the Lower Counties from the Dutch, and had never properly ascertained the bounds of Maryland. For these reasons he believed Baltimore had forfeited all claims to the Newcastle country; but desired that at all events he should be forced to run his boundary line from Watkin's Point to the beginning of the fortieth degree, *i. e.*, to the thirty-ninth parallel.²

¹ *Breviat*, pp. 74-5.

² Penn MSS., Ford *vs.* Penn. It is curious to note what erroneous ideas were prevalent concerning the topography of the country. Penn wrote to the Marquis of Halifax that Baltimore did not need the territory north of the thirty ninth parallel, because he already had a country 200 miles in length upon both sides of Chesapeake Bay. *Mem. Pa. Hist. Soc.*, i, pt. ii, pp. 415, 421.

The entire length of Chesapeake Bay is not quite 200 miles, and even granting

Baltimore's agents, in May, 1683, petitioned the king that the previously outlined grant to the Duke of York, dated April 13 of that year, should not pass the seal until the matter in controversy was settled. In the hearings before the committee of council, Penn and his attorneys constantly employed the duke's name, probably trusting to the influence such a proceeding might have. Occasionally the duke's counsel also participated in the discussions. Penn pleaded among other things not only the great expense he had incurred by settling the province and Lower Counties, but also the fact that in 1683 and 1685 he had purchased from the Indians tracts of land extending from Duck Creek and Chester Creek, and from the Delaware westward as far as a man could ride in two days. Baltimore replied by showing a copy of an order in council, dated April 4, 1638, which gave to his predecessor the possession of Kent Island. By reference to Smith's map it would be seen, he said, that it lay several miles north of the thirty-ninth parallel. If Kent Island thus was within his bounds by charter, certainly all lands to the eastward of it, as far as Delaware Bay or the ocean, were so included.¹ At length, upon the recommendation of the committee, an order in council was issued, November 7, 1685, which stated that upon examination of the matters in dispute between Baltimore and Penn, the committee found that the land intended to be granted by the patent to Baltimore was only that which was uncultivated and inhabited by savages. It was believed that the tract in dispute was inhabited and cultivated by Christians in and before 1632, and that it had always been a colony distinct from Maryland. Hence it was ordered that the region bounded on the east by the ocean and the river and bay of Delaware, and on the west by Chesapeake

Baltimore's claim that Watkin's Point lay in 37° 48' north latitude, if his northern limit was to be the thirty ninth parallel, his water front on Chesapeake Bay would not exceed 75 miles.

¹ *Breviat.*

Bay, should be divided into equal parts by a line drawn from the latitude of Cape Henlopen northward to 40° north latitude, the eastern half of which should belong to the king, and the western half to Baltimore.¹ In view of the fact that James was personally interested in the affair, it is not remarkable that such a decision was rendered.

Baltimore despairing of any present relief connived at various petty expeditions from Maryland into the Lower Counties. Outrages were numerous.² Settlers under the jurisdiction of Pennsylvania were brought before the Maryland courts, visited with indignities, and driven off their lands, while their houses were burned and their crops and cattle destroyed or stolen. At length Baltimore made another attempt to oust Penn from his possession. January 9, 1708, he petitioned Queen Anne to set aside the order in council of 1685, on the ground that it had been surreptitiously obtained, and was false in its statements. He therefore requested that the line of division between Pennsylvania and Maryland should be determined, and that the Lower Counties should be adjudged to lie within his jurisdiction. This being referred to the Board of Trade, Penn told the members of that body that they were not the proper judges, and could not disturb an order in council. Upon complaint to the president of the council he was advised to send in a counter petition. In it he cited the directions issued in 1685, and pleaded the expense he had undergone, the improvements he had effected, and his quiet possession for many years. He therefore desired that the petition from Baltimore be dismissed.³ When his request was granted, Baltimore, May 19, 1709, sent in another petition of the same tenor as his previous one, asserting the falsity of the counter petition,

¹ In their proceedings in chancery the Penns endeavored to strengthen their claim by showing that as the order was directed to Penn and Baltimore, it would be rather unusual for the king to direct Penn to run a line for the king himself. *Ibid.*

² *Col. Rec.*, i, pp. 104, 115, 188, 515. ³ *Mem. Pa. Hist. Soc.*, i, pt. i, p. 209.

and declaring that in the proceedings of 1685 he had never been heard in his own defense. This statement was disproved at a hearing in council, his petition was again dismissed, June 23, 1709, and the order of 1685 was confirmed and commanded to be put in execution.¹

Then the petty disturbances in the Lower Counties were renewed, and the governors of Pennsylvania retaliated by proclamations to apprehend and punish the invaders. The governors of Maryland continued to offer lands at reduced rates to encourage settlements in that region. Notices were posted up bidding persons who held their lands by grants from Penn, and who wished to have their titles respected, to make application to Baltimore's agents. But the tide was steadily setting against the Maryland proprietor. Ever since the appointment in 1693 of Benjamin Fletcher as royal governor of Pennsylvania and of the Lower Counties as territories dependent thereon, the Lower Counties had been looked upon as a part of Pennsylvania. The governors of the province with the approbation of the crown had for many years exercised jurisdiction over them. The assembly of Maryland by acts passed in 1704, 1707, 1715 and 1724 acknowledged that they were annexed to Pennsylvania. A large number of the inhabitants, however, refused to pay rent to either Baltimore or Penn. Hence, February 17, 1724, six years after the death of the Pennsylvania proprietor, Charles, Lord Baltimore, entered into an agreement with Mrs. Penn, that no person should be disturbed in his possession, and that for the period of eighteen months no lands near the boundary line of either province should be surveyed or taken up. A proclamation to this effect was issued by Gov. Keith of Pennsylvania May 15, 1724, but the death of Mrs. Penn, the infancy of the young proprietors, and the neglect of Baltimore renewed the confusion.² The governors of the two provinces held many conferences, which usually resulted in a series of empty promises easily broken.³

¹ *Breviat*.

² *Ibid*.

³ *Pa. Arch.*, 1st series, i, pp. 320-488.

Then Baltimore petitioned the king, July 31, 1731, to order the Penns to join with him in settling the boundaries; but in case they refused, or in case the boundaries were not definitely settled within twelve months, that the matter should be determined by royal decision. The Penns at that time were not well acquainted with the details of the dispute, and could not readily secure the necessary evidence to prove their title. In a conference between the attorneys of the respective parties it was stated that, if the Penns did not agree to the extension of the Maryland boundary northward to within fifteen miles of Philadelphia, Baltimore would again set up his claim to the Lower Counties. Though the agents for the Penns strenuously insisted on 18 or 20 miles south of Philadelphia as the northern boundary of Maryland, this demand of Baltimore was at length complied with. Before the final agreement, however, Baltimore insisted that all members of the Penn family holding lands in Pennsylvania should attach their signatures to the articles, and made several other stipulations to which the Penns acceded, and which were later embodied in the agreement itself. This was dated May 10, 1732, and ran as follows: It was to be based geographically on a certain map which was prefixed to it. The circle mentioned in the charter of Pennsylvania and the deeds of enfeoffment, should be drawn at 12 English statute miles from Newcastle. A line was to be run from Cape Henlopen directly west to the exact centre of the peninsula, and from its western end a perpendicular line was to be drawn northward till it touched the extreme western point of the circumference, thus making a tangent. From this point again a line should be traced due north till it reached a point fifteen statute miles south of the most southerly part of Philadelphia. Starting at the northern end of this line, another should be run directly west across the Susquehanna to the limit of longitude; but as the western lands were then unsettled it was stipulated that for the present the line should not extend further than 25 statute miles

west of the Susquehanna. Furthermore, it was agreed that if the northern extension of the tangent line intersected the circle, so much of the circle as was cut off should belong to Newcastle, provided that in case the head of any river flowing into the Chesapeake, the Delaware, or the ocean, should be on one side of the boundaries indicated, and the remainder on the other, then the inhabitants of the province or counties within whose limits the head of the river should fall, were to be forbidden the use of the lower part of the river for commercial purposes, without the consent of the proprietor of such lower part. It was also agreed that within two months the respective proprietors should each appoint seven commissioners, whose duties should be to act with all fairness and dispatch in the prosecution of their work, which was to begin not later than October, 1732. The boundary lines should be designated by stones, posts, trees, pillars, buildings and the like, marked on one side with the arms of Baltimore and on the other with the arms of Penn. The lines having been determined before December 25, 1733, an exact plan of the survey was to be signed and sealed by the commissioners and principals and entered in all the public offices in the two provinces and counties. Then the respective proprietors agreed to recommend to the assemblies the passage of acts for the visitation of the boundaries on certain fixed days triennially, in order that the limits might remain accurately determined.¹ If a quorum of the commissioners did not attend to the running of the lines, the agreement was to be void, and the defaulting party liable to a forfeiture of £5,000. Then Baltimore and

¹ William Penn by a warrant, dated Oct. 28, 1701, had directed certain surveyors and justices of the peace to survey from Newcastle twelve miles up the Delaware, and from this distance to divide Newcastle and Chester counties by the circular line. This was marked two-thirds of the distance by notches on trees; but Newcastle county levied taxes on inhabitants of Chester county, on the ground that the line had been illegally run. Therefore the provincial assembly in 1715 passed an act to confirm this boundary, but it was repealed by the king in council, July 21, 1719. Bradford, *Laws of Pa.*

the Penns renounced all claims to territory other than that which lay within their respective limits as thus traced. Exception, however, was made of grants which had been made to individual settlers within what had been disputed territory. In order to secure these settlers it was further stipulated that each party should copy grants, leases, or warrants made by authority of the other prior to May 15, 1724, and upon receipt of the accustomed fees should issue new grants of the same tenor, provided the grantees became tenants of the present proprietor, and liable to all rents, arrears and duties according to the original deeds. Finally, in cases during the dispute, where a title for lands in the disputed region had been taken from both parties, or where land had been settled without permission from either, such settlers, if they consented to hold of the new proprietor should be treated with moderation.¹ It is thus to be noted that Baltimore gave up his right to the Lower Counties, except so far as uncertainty existed about the location of Cape Henlopen.

The commissioners were appointed, and, November 24, 1733, reported that at several meetings the representatives from Pennsylvania had insisted upon surveying the circumference of a circle at twelve statute miles from Newcastle; but that the Maryland commissioners construed the wording of the deeds of enfeoffment, viz., "all that town of Newcastle, and the tract of land lying within the compass or circle of twelve miles about the same," as meaning that a circumference of only twelve miles in length should be drawn, thus making the radius less than two miles instead of twelve. Thereupon the commissioners from Pennsylvania refused to proceed further, and the matter was referred to the principals.

On August 8, 1734, Baltimore presented a petition to the king, praying that by letters patent he might be put in possession of the Lower Counties. To support this request, he cited the phraseology of his charter, the order in council of

¹*Breviat.*

1638, and the alleged fact that prior to his grant the territory had not been occupied by Christians or by subjects of Great Britain. But he was careful to make no allusion to the agreement of 1732, or to the fact of possession by the Penns up to that time. The petition as usual was referred to the Board of Trade, which reported to the committee of the council that the Lower Counties appeared to be included in the grant to the present Lord Baltimore's ancestor, but for many years had been in possession of the Penns; that since 1702, when Andrew Hamilton was appointed governor, the declaration of the king's right to them had been made when each successive governor was approved, and that the Penns had been summoned, but had refused to answer concerning the matter. It was, therefore, left to the king to decide whether the order of 1685, at which time William Penn had acted as agent for the Duke of York, or the order of 1638 should have the greater consideration; but it was believed the latter would be more likely to show the real intention of the crown. The committee of the council then heard the attorneys for both sides, but Baltimore was the more strongly represented. An order in council was accordingly issued, May 16, 1735, which stated that the report of the Board of Trade and two petitions presented by the Penns had been considered, and recommended that the decision of the question should be postponed; but that in the meantime the Penns should proceed in a court of equity to obtain relief on the articles of agreement.¹ Later either party might apply to the committee of the council, as the nature of the case should require.

A short time after this the Penns presented in chancery a bill which contained all the points of dispute most exhaustively

¹ The Privy Council refused to take cognizance of the case, because its jurisdiction was held to be confined only to "original, unsettled, conflicting, chartered grants of colonial territory," and therefore the case should be tried before an essentially judicial tribunal. Penn MSS., *Autograph Petitions*; *Ibid.*, *Corresp. of the Penn Family*; T. P. to John Penn, Nov. 24, 1736, and to Peter Colinson, Aug. 1, 1737.

stated.¹ In it they charged Baltimore with making large grants of land without indicating their location, and that by having them surveyed in the disputed territory, the agreement was frustrated. They prayed for an answer to a long list of questions, and asked for liberty to examine witnesses. They desired quiet possession of the Lower Counties, that the agreement should be declared in full force and be properly executed, that the pretended doubts as to fixing a centre for the circle around Newcastle, the dimensions of the circle, and the distance from the town, should be removed; and that Baltimore should give further assurances that he would perform the agreement, and settle through a master in chancery all differences which thereafter might arise. Finally, they requested that Baltimore be compelled to pay costs, and that due relief in every sense should be rendered them.

At first Baltimore refused to answer. Thereupon, July 29, 1735, the Penns obtained from the chancellor an order for sequestration, unless good cause to the contrary could be shown. Baltimore in turn obtained an order to refer the bill on the ground of scandal and impertinence; but a master in chancery deciding adversely, he was forced to answer. His lengthy reply contained a general denial of the allegations made by the plaintiffs, and was replete with all kinds of legal devices to make the case as intricate as possible.² It would be tedious and useless to consider the truth or falsity of the individual statements of both parties.³ Baltimore claimed, however, that the

¹*Breviat*.

² Among the ingenious arguments used by the attorneys for Baltimore was the following: The Maryland proprietor was by the crown deprived of governmental rights from 1692 to 1715; and as the Lower Counties had not been sufficiently wealthy to maintain a governor, the governors of Pennsylvania had been permitted temporarily to exercise authority, until Baltimore could prefer a petition to the crown to establish him in possession. *Ibid.*

³ They may be seen at length in the *Breviat*, in the Penn MSS., *Penn vs. Baltimore*, or in the MS. volume of 833 pages, called the "Decree of the Chancellor," in the library of the Pennsylvania Historical Society.

action of his commissioners had been fair, and that the agreement of 1732 was invalid by reason of the lapse of time. Hence he desired that it should be cancelled, and costs decreed against the Penns. As a further sign of his evasive policy, alleging that fraud had been committed in obtaining the articles of agreement, he again petitioned the king, April 21, 1737, to be put in possession of the Lower Counties, or at any rate that no governor recommended by the Penns should be appointed over them until the dispute concerning the validity of the articles was settled. He desired that in the meantime the king would directly appoint the governor, and send orders to reassure the settlers on the lands near the boundaries.¹ Several petitions had also been sent from Maryland and Pennsylvania complaining of outrages committed on the borders, and asking for the king's interposition, in order that peace might continue until the boundaries were established. The Board of Trade reported that while the suit was pending, since the Penns for many years had regularly appointed governors under proper reservations, it did not advise any change in the method of appointment. Then, August 18, 1737, another order in council was issued, commanding that the governors of Maryland and Pennsylvania, under pain of the king's displeasure, should take measures to suppress further tumults on the borders. They were also bidden to make no grants of the land in dispute, nor of any in the Lower Counties, and not to permit any person to settle there till the king's pleasure was known.

But the complaints continued. Hence the committee of the council summoned all the proprietors to answer them. The exigencies became so pressing that the Penns and Baltimore made another agreement, May 25, 1738.² This provided that so much of the previous order in council as related to the preservation of the peace on the borders should be observed,

¹ *Breviat*, p. 73.

² Hazard, *Register of Pa.*, ii, pp. 200, 209, 225.

but should not affect the Lower Counties proper, for no riots had been reported there; that all other lands in controversy should remain in the hands of the present possessors, even if beyond the temporary limits; and the jurisdiction of the particular proprietor should continue over such persons till the boundaries were adjusted. Furthermore, it was agreed that the tenants of neither party should attorn to the other, nor should either of the parties or their officers receive the attornments of the other's tenants; and that all vacant lands in dispute, not lying within the Lower Counties, nor actually possessed by either party, if they were on the east side of the Susquehanna and north of a line $15\frac{1}{4}$ miles south of the most southern part of Philadelphia, or if on the west side and $14\frac{3}{4}$ miles south of Philadelphia, should be regarded as temporarily under the jurisdiction of Pennsylvania; but all vacant lands south of that line should be similarly under the jurisdiction of Maryland. The proprietors were also allowed to grant on the common terms any of this vacant land within their respective limits, for which each of them should account to the other, if he was adjudged the proper owner when the boundaries were finally settled. It was also stipulated that prisoners concerned in the disturbances should be discharged, upon their entering into recognizances to appear and submit to trial when ordered by the king. Lastly, this agreement was not to redound to the prejudice of either party, and the king was desired to annul so much of his previous orders as differed from the foregoing. This was immediately approved by the king and ordered to be executed.

During the course of the suit in chancery the question at issue became still more involved by the new contention of Baltimore respecting the location of the fortieth parallel. It seems that the Maryland proprietor in 1714 sent over certain instruments to be used in determining astronomically the parallels of latitude. By this proceeding it was found that the fortieth parallel was located about five miles north of Philadel-

phia, and the thirty-ninth parallel the same distance south of the present city of Washington. Baltimore contended that the fortieth parallel should be determined according to present measurement. The Penns in turn urged their claim to the territory as far south as the thirty-ninth parallel. This contention properly had no weight with the chancellor. Then Baltimore endeavored to prevent a decree by a continuation of his policy of inventing all kinds of frivolous objections and captious criticisms. But when he saw that the coming decision was likely to be adverse, he demanded that the southern line of the Lower Counties should be traced directly west from the present Cape Henlopen, no matter where it was presumed to have been formerly located.

It may be said that the situation of Cape Henlopen, and the derivation of the name, were matters of considerable doubt. We have seen by the projected grant to the Duke of York in April 1683, that Cape Henlopen was known as Cape James, so named by Penn in honor of his patron. Moreover, in the deeds of enfeoffment of August 1682, the Hoarkills (or Whorekills) were called Capin Lopen.¹ If this is true, then the present Cape Henlopen was intended, because it is situated very near the Hoarkills, which is a creek near the present town of Lewes. But the order of 1685 described the ocean as bounding the Lower Counties on the east, which it could not do if the cape was at the entrance to Delaware Bay; and in the map prefixed to the agreement of 1732 the present Cape Henlopen is called Cape Cornelius, for it was believed that Captain Cornelius May had called the Delaware cape and the Jersey

¹ The language of the act of union passed at Chester, Dec. 7, 1682, and which united the province and Lower Counties is as follows: "Forasmuch as all that tract of land lying on the west side of the river Delaware, beginning from twelve miles above Newcastle northward, and extending to the south cape, commonly called Cape Henlopen, making the mouth of the Bay of Delaware, of late divided into three counties, and called by the names of Newcastle, Jones and Whore-Kills, alias Deal." *Charter and Laws of Pa.*, p. 104.

cape after his own name. Various old Dutch and Swedish maps of the 17th century also indicate that the point of land called Cape Henlopen was about 25 miles south of the so called Cape Cornelius. The Penns claimed that the word "Henlopen" was derived from a Dutch word¹ signifying "to recede," or "run away," because mariners at some distance out saw a jetty of land which had the appearance of a cape, but as they approached, it disappeared, and only a number of rocks were visible. Thus it was often called the "False Cape," in contradistinction to Cape Cornelius at the entrance to the bay. But in the course of time the name Cornelius was replaced by Henlopen. Baltimore's witnesses on the other hand endeavored to prove that "Henlopen" was derived also from a Dutch word signifying "to flow in." Cape Henlopen, according to their argument, had always been situated at the mouth of the bay. Thereupon the Penns showed that, although the most southern county had changed its name successively from Hoarkills to Deal, and finally to Sussex, it was always believed to extend at least twenty miles south of Lewes, for the inhabitants of that region regularly attended the Sussex County court.² A line drawn westward from the present Cape Henlopen would cut off a large portion of Sussex County. Hence this proposition of Baltimore's shared the same fate as his previous contention.

The case was carried on at great expense. Prominent crown lawyers were employed on both sides; and many witnesses were examined in England and America.³

Finally, May 15, 1750, Lord Chancellor Hardwicke pronounced his decree.⁴ He called attention to the chicanery of Baltimore in endeavoring to evade the agreement of 1732, and

¹ Dr. O'Callaghan (*Hist. of New Netherland*, i, p. 73), says that Cape Hindlopen was named after a town in the province of Friesland.

² *Breviat; Mem. Pa. Hist. Soc.*, i, pt. i, pp. 190, 191.

³ Penn MSS., *Penn vs. Baltimore*.

⁴ *MS. Decree of the Chancellor*.

the great expense the Penns had been forced to undergo.¹ He thought that the Duke of York was a trustee for William Penn, and had the territory been at that time in the hands of a subject, he would have ordered that the contract to confirm possession should be fulfilled.² Hence he decreed that the articles were obligatory, and should be fully executed by the parties in spite of the limitation of time. But this proceeding was not to prejudice any claim based on the title of the Duke of York or any other title which the crown might set up, nor the possession of settlers over whom the parties might have had no power. He therefore commanded that the plaintiffs and defendants within three months should appoint commissioners to ascertain the boundaries. These commissioners should act with fairness, and begin proceedings by November, 1750, so that the lines might be duly surveyed by April 30, 1752, at which time properly attested copies of the plan of survey should be entered in the public offices according to the agreement, and delivered also to the respective parties. Questions on which they might not agree should be referred to a master in chancery. Concerning the location of the circumference of the circle, he declared that the intention of the articles was that the centre of the circle should be the middle of the town of Newcastle, and its radius twelve miles. Cape Henlopen he thought should be considered situated at the place mentioned in the map prefixed to the articles, *i. e.*, 25 miles south of the present cape. After the boundaries had been determined, the parties were to make the necessary releases and assurances according to the agreement, and at the cost of the party desiring them. If the crown interposed any

¹ *Vesey's Reports*, p. 455.

² The solicitor-general advised the Penns to petition the king to make good the Duke of York's assurances of confirmation; while the attorney-general did not attempt to stop the execution of the agreement on the pretense that without direction from the crown the parties had no right to enter into it. P. L. B., ii, T. P. to Hamilton, May 16, 1750.

objections, the parties were again to apply to chancery for further directions. The Penns were ordered to pay Earl Powlett, one of the trustees to whom William Penn by will had confided the government of Pennsylvania and the Lower Counties, any expenses he might have undergone during the suit, while Baltimore was to pay the entire costs of the suit as ascertained by a master in chancery. Lastly, the chancellor reserved consideration of further costs and directions until the time limited for performance of the agreement had expired; and both parties were allowed to resort to the court whenever occasion should require it.

The commissioners met at Newcastle, November 12, 1750, and agreed on a centre; but immediately a dispute arose concerning the measurement of the radii of twelve miles. Baltimore's representatives contended that they should be computed superficially; but the Pennsylvanians maintained that on account of the various inequalities of the ground, the radii measured by this method would not extend to points equidistant from the centre, and hence a true circumference could not thus be drawn. Therefore they insisted upon astronomical and geometrical measurement. This was another scheme of Baltimore to frustrate the agreement. Manifestly if the incline of every hill or depression, as well as the level ground in each twelve miles were measured, the radii as measured on the horizontal would terminate at unequal distances from Newcastle, and through their terminations no circumference could be drawn. Thereupon the Penns applied to the chancellor, setting forth the new objections, and desired that the distances from both Newcastle and Philadelphia should be measured horizontally, not superficially. The request was granted.¹

Then the commissioners in April, 1751, agreed that a line should be run due west, and properly marked from a point on the shore of the ocean 139 rods due east from a stone already

¹ Agreement of 1760.

fixed on the northern part of Fenwick's Island (near the former Cape Henlopen), across the peninsula to Chesapeake Bay. From the centre of this east and west line another line should be drawn northward, until it formed a tangent with the circumference of the circle. This was subject however to alteration or confirmation by the chancellor, or by a joint order from their principals. The surveyors fixed the east and west line as far as Slaughter's creek, but the Maryland commissioners insisted that the line should go no further, *i. e.*, that its length should be 66 miles, 248½ rods. The Pennsylvania commissioners declared that the line should touch the shore of the bay, *i. e.*, that it should be 69 miles, 298 rods in length. The deadlock continued till November, 1754, when the Penns exhibited in chancery a bill of reviver and a supplemental bill of complaint, and obtained an order to revive the proceedings.¹

On behalf of Frederick, Lord Baltimore, his guardians in March, 1755, pleaded certain leases and releases as a bar to the relief sought, and insisted that his rights to the Lower Counties should not be affected by his father's articles of agreement. Thereupon, by permission of the chancellor, the Penns in September, 1755, filed an amended bill of reviver for specific performance of the articles, and for security for the payment of the costs as formerly decreed and of such as might be incurred by non-execution of the articles. At length Frederick, wearied of the struggle, in 1760 entered into a final agreement with the Penns. This provided that the east and west line should extend 69 miles, 298 rods; so that its exact centre should be 34 miles, 309 rods from the fixed point on Fenwick's Island. At this middle point of the line were to be placed several large stones, of which those facing to the south and west should have the arms of Baltimore marked on them,

¹ If the Penns could have induced Baltimore to agree to the bill of reviver, they would have endeavored to procure from the crown a charter for the Lower Counties. P. L. B., ii, T. P. to Peters, June 10, 1754.

while those facing north and east should bear the arms of Penn. Baltimore consented also speedily to appoint commissioners to carry out the articles, and promised to indulge in no whimsical objections, and not to acquiesce in the prosecution of any suit by his tenants, whereby the right of the Penns to Pennsylvania and the Lower Counties, as bounded in 1732, might be questioned or impaired. Lastly, it was stipulated that Baltimore should make such additional assurances of his intention to render the articles and the decree effectual that further suits should cease, and the Penns be confirmed in their possession. Two years later the chancellor ordered it to be executed.¹

Commissioners were again appointed, but the actual work of running the lines was entrusted to two expert surveyors, Charles Mason and Jeremiah Dixon.² Differences of observation or measurement, on which the respective commissioners could not agree, were divided equally between the Penns and Baltimore; but difficulties in exactly determining the tangent line and the northern boundary of Maryland, caused the survey to be protracted during several years.³ In 1767 Mason and Dixon finally located the northern boundary of Maryland at 39° 44', and extended it westward about 230 miles from the tangent line. At intervals of five miles they placed the marked stones, several of which are still standing, and smaller stones at every mile; but throughout the last hundred miles of the distance, where transportation by carriage was impossible, the line was indicated by heaps of stones on the mountain ridges, as far as the summit of the Alleghanies, beyond which again it was marked by posts surrounded by stones and earth.⁴ The agreement and proceedings in determining this line, as well as the

¹ P. L. B., vii, T. P. to Hamilton, March 6, 1762.

² Penn MSS., T. P. to Peters, March 13, 1761; April 13, 1762.

³ P. L. B., vii, T. P. to Peters, Hamilton, and the commissioners, Jan. 18, and Feb. 12, 1763; May 24, 1765.

⁴ Latrobe, *History of Mason and Dixon's Line*.

southern and northern boundary of the Lower Counties, were ratified by an order in council, January 11, 1769, and proclamations were issued to quiet the settlers in their possession. Thus by the running of "Mason and Dixon's Line" one of the most remarkable boundary disputes in the history of the American colonies was brought to an end.

II

Connecticut.

THE extraordinary claim put forth by this colony to the land in the fertile Wyoming Valley is interesting, because it is an example of the shrewdness so characteristic of New England people. Nothing was heard of any territorial rights there until the land had become valuable by reason of adjacent settlements. Then the New Englanders realized that they were in possession of a piece of paper which promised them enormous tracts far away to the westward, and they saw the necessity of speedy action if they wished to make good their title. The Connecticut-Pennsylvania claim rested on three considerations, viz.: the terms of the charters of the two colonies, Indian titles, and actual possession. The scheme appears to have originated in Windham County, for in March, 1753, a number of residents in that county submitted the proposition to the General Court. Utterly ignoring the Pennsylvania charter, and with possibly a recollection of the attempts of New Haven to establish a settlement on the Delaware in the middle of the seventeenth century, they called attention to the land on the Susquehanna, alleging that for a distance of seventy miles west of the Delaware it was unsettled, and that by charter it was within the territorial bounds of Connecticut. They stated that a company, then in process of formation, desired the General Court to grant it a quit claim for land sixteen miles square on both sides of the Susquehanna. They promised also to purchase the territory from the Indians, and within three years to have it duly settled. Of course it was to be subject to the jurisdiction of Connecticut.

After the plan had been approved by the Court the "Susquehanna Company" was formally organized.¹

The Connecticut claim, so far as there was any apparent basis for it, was founded on the royal charter of April 23, 1662. This purported to give to the governor and company of Connecticut all the territory bounded on the east by Narragansett Bay, on the north by Massachusetts, and with this breadth stretching westward to the Pacific.²

As the Dutch interests had been established along the Hudson, there was much less reason for so extensive a grant than when the early colonial charters were issued. All that may be said in justification is, that it was consistent with what had always been the claims of the English. The Penns believed that the purpose of the king was to bestow only the territory which had not been granted between Massachusetts and Plymouth on the north and east, and the Dutch settlements on the west, but not any territory west of the Delaware. In fact, March 12, 1664-5, the first grant was made to the Duke of York. This was followed by the conquest of New Netherland. Thenceforward an English province existed along the banks of the Hudson, and must be an obstacle in the way of the indefinite extension of Connecticut westward. The result of this grant and conquest was apparent when, in December, 1664, the royal commissioners, Nicolls, Cartwright and Maverick, with the consent of delegates from the Connecticut General Court, fixed the western boundary of that colony at the Mamaroneck

¹ Larned, *History of Windham County*, i, p. 556 *et seq.*

² The ingenious location of this territory by Rev. Dr. William Smith, of Philadelphia, is interesting in this connection. He proceeded on the general theory that colonial grants were based on the Atlantic water front, and extended perpendicularly into the interior. He based the Connecticut territory on a line extending a little south of west from Point Judith to Greenwich. He then laid the grant on this line, running back a little west of north to the South Sea, which he intimated might be Lake Champlain. But this can hardly be a correct construction of the lines, for the grant would include all of western Massachusetts, an interference which it is not to be supposed was intended by grantors or grantees. See Smith, *An Examination of the Connecticut Claims*, etc., Philadelphia, 1774.

river, and a line drawn northwest from its source. Its southern boundary was settled in accordance with the terms of the grant to the Duke of York, so that Long Island was put under the jurisdiction of New York. With a few slight changes these boundaries were ratified, November 23, 1683, by articles of agreement between Gov. Dongan and the council of New York on the one hand, and the governor and commissioners from Connecticut on the other.¹ The settlement of the boundary was finally confirmed by an agreement dated May 14, 1731, between commissioners appointed from the two colonies.

Whether this was to be construed as an absolute prohibition, and that Connecticut could not thereafter assert any claims beyond the bounds of New York, was not expressly determined. The supporters of the later claims of Connecticut insisted that the settlement of the boundaries in 1664 was intended merely to determine the rights of the Duke of York in territory formerly owned by the Dutch, and could not prejudice the rights of the governor and company to any territory west of his limits. Because the land west of the Delaware river was not directly claimed by the Dutch, they thought it was the property of the crown at the time of the Connecticut grant, and was not re-invested in the crown by any settlement of boundaries. Moreover, when events were rapidly leading to a formal support of the Susquehanna Company by direct action of the colony, certain prominent crown lawyers were asked in 1773 to give their views of the case. They expressed the opinion that the words of the charter of 1620, limiting the grant to lands not "actually possessed and inhabited by any other Christian prince or state," did not apply to lands west of the Dutch possessions. They believed that the agreements between New York and Connecticut were intended merely to settle the boundaries between those colonies, and did not affect the claims of either to other territories. Furthermore,

¹ Penn MSS., *The Wyoming Controversy*.

since the charter to Connecticut antedated Penn's by only nineteen years, there was no reason to presume that the crown could make a valid grant to Penn of a country so recently granted to others.¹ But in answer to this, it is to be noted that the attorney general, when giving his opinion on Penn's petition in 1680, stated that the land west of the Delaware river was "undisposed of, unless the imaginary lines of New England patents, which are bounded westwardly by the South Sea, should give them a real though impracticable right to all those vast territories."² Again, the opinion of the attorney general in 1762 is worthy of consideration. He observed that, if all the colonies in North America were to remain bounded as described in the original grants, none of them had wholly escaped from encroachment. Hence if grants were the only rule, there would be no end of disputes. Other considerations, he thought, than mere parchment boundaries, as possession, acquiescence of the parties, and conformity with the condition and needs of the province at the time of the grant, should have weight in reaching the final decision. He asserted that the western boundary of Connecticut as mentioned in the charter, was barred by the Dutch in 1662, and that the later agreements prevented that colony from advancing beyond the existing limits. His conclusion was that the crown, when prevailed upon to convey a territory belonging to another state then in amity with England, had been deceived. Connecticut therefore had no right to assert any pretensions to charter limits by overleaping the province of New York, and encroaching on Pennsylvania, because he believed that the boundary when so determined left a new grant open to the crown's disposal.³ This view of the attorney-general seems to afford the best practical solution of the difficulties which resulted from the carelessness of the crown in bestowing its easily-acquired dominions. Were the vague words of

¹ *Conn. Col. Rec.*, xiv, p. 447 *et seq.*

² Hazard, *Annals of Pa.*, p. 484.

³ *Pa. Col. Rec.*, viii, p. 621.

the charter of 1662 the only argument, and had the claim based on them been judiciously asserted when the boundary with New York was settled, Connecticut's title would have been very strong.¹

Let us take up now the second consideration, namely that of Indian title. The company, having been organized with a membership of about 700, determined to perfect its claim by a purchase from the Indians. This was accomplished at the famous Albany Conference of July, 1754. Eighteen chiefs of the Six Nations, for the sum of £2000, agreed to sell all the territory claimed. It was bounded as follows: Beginning at 41° north latitude and at a point ten miles east of the Susquehanna, the line extended northerly to 42°, and westward a hundred and twenty miles, thence southerly and easterly so as to inclose a parallelogram of about 7200 square miles.² But this very tract had already been sold several times to the Penns. As already stated in the chapter on Indian affairs, twenty-three chiefs of the Six Nations, Delawares and Shawanese had sold to the proprietors, October 11, 1736, all lands on both sides of the Susquehanna. Two weeks later they executed a deed of confirmation, and promised to sell lands to no

¹ "Connecticut is bounded on the west by New York." Penn MSS., *Wyoming Controversy*, Gov. Wolcott (of Conn.) to the Board of Trade, Dec. 31, 1750.

² At the meeting of the commissioners from the various colonies at this time and place, it was resolved that, although the western boundary of Massachusetts and Connecticut was the South Sea, they should be limited by the Allegheny Mountains. This is about the western limit of the Indian deed to the Susquehanna Company. *Pa. Col. Rec.*, vi, pp. 101, 104.

Subsequent to the purchase by the Susquehanna Company, another organization of persons in Connecticut, called the Delaware Company, secretly bought from certain chiefs all the region between the Wyoming purchase and the Delaware River. Miner, *History of Wyoming*, p. 69.

It may be said, however, that this Wyoming scheme was not confined entirely to residents of Connecticut, for in the Indian deed to the former company were named 638 grantees from Connecticut, 33 from Rhode Island, 10 from Pennsylvania, 8 from New York, and 5 from Massachusetts. Hoyt, *Syllabus of the Controversy between Connecticut and Pennsylvania*; *Pa. Arch.*, 1st series, ii, p. 147.

one but the Penns. A portion of this territory was likewise included in a purchase from the Six Nations by the proprietors in August, 1749. Lastly, the Penns by a deed from the Six Nations, obtained a few hours before that to the Susquehanna Company, bought another tract, which included practically all lands west of the Susquehanna.¹ Hence, so far as Indian sales constitute a real title, the claim of the proprietors seems well supported, though it was argued by the Connecticut partisans that for the Penns to purchase from the Indians lands within the bounds of the Connecticut grant was illegal. Furthermore, the purchase of the Susquehanna Company was attended with considerable sharp dealing, if not with positive fraud. Some of the Indians were intoxicated, and others by smooth promises were inveigled into signing the deed.² In fact the Indian councils in 1755, 1758 and 1763 denied the legality of this sale, and upon learning of an intended settlement by Connecticut people in the disputed section of country, sent a deputation to Connecticut to protest against such an act of trespass, as the lands were rightfully the property of the Penns. The proprietary officers also sent remonstrances to the Connecticut authorities. Then the governor of Pennsylvania wrote to the governor of Connecticut, asserting the exclusive right of the proprietors to all territory within their limits by charter, and protesting vigorously against any intrusion. At the same time he offered to grant the land on reasonable terms to such of the Connecticut people as might wish to settle

¹ *Pa. Col. Rec.*, vi, pp. 120-5; Smith, *Laws of Pa.*, ii, 115, 116, 126, 129.

² Miner, in his *History of Wyoming*, says, "Under the eye of the Pennsylvania delegation a purchase was made by the Connecticut people." But it is certainly absurd to suppose that the proprietary agents would have permitted the sale of any land within the charter limits of Pennsylvania. Further, Sir William Johnson intimated that the purchase was secured by fraudulent means, and in the treaty at Fort Stanwix in 1768, this act of the Connecticut people was a second time characterized in this way. See *Pa. Arch.*, 1st series, ii, pp. 174-5; *Pa. Col. Rec.*, vi, p. 129, x, p. 178; *N. Y. Col. Doc.*, vi, p. 987; Hoyt, *Syllabus*, etc., p. 39; Penn MSS., *Offic. Corresp.*, xi, R. Peters to T. P., May 15, 1774.

there.¹ This failed to meet with approval in Connecticut. Thereupon in 1754 he sent a commissioner to that colony. On his return the commissioner reported, that the governor and other prominent officials in Connecticut declared that the purchase was of a private nature and really contrary to law.²

But whatever was the apparent attitude of the Connecticut officials, the company was strongly supported in its project. Many of the inhabitants, however, denounced the scheme as wild and preposterous, urging the great opposition that might be encountered from the Indians and the distance of such lands from the seat of government. But those interested in the undertaking had good reason to believe that it would be sanctioned by the General Court, and professed a willingness, in case the Penns interposed any objections, to have the matter judicially determined. Indeed they held a convention at Hartford, and chose a committee whose business it should be to make every effort to have members of the General Court elected who were favorable to the project, and would either confirm the Indian title or permit the company to petition the king for a charter of incorporation. Their efforts having been successful, the purchasers applied to the General Court for permission to form a distinct commonwealth, if the king would grant them a charter. The Court thereupon resolved that such a settlement would be a means to secure the friendship of the Indians, and to defend the king's dominions. It also gave the company liberty to make further Indian purchases, and recommended the petitioners to the royal favor.³ The Penns, upon receipt of this intelligence entered in all the colonial offices in London a caveat against the application, whenever it should be presented.⁴

¹ *Pa. Arch.*, 1st series, ii, p. 176; Penn MSS., *Offic. Corresp.*, vi, Gov. Morris to Lieut.-Gov. Fitch, Nov. 20, 1754; to T. P., Dec. 26, 1754.

² Penn MSS., *The Wyoming Controversy*; Report of John Armstrong.

³ The colony proposed would have been almost as large as Connecticut. *Conn. Col. Rec.*, x, p. 378; Trumbull, *Hist. of Conn.*, ii, pp. 470, 474-8.

⁴ Penn MSS., *Supp. Proc.*, T. P. to Peters, Jan. 9, 1761.

Having thus disposed of the claim by Indian title, we shall examine the question of actual possession, and trace the history of the controversy up to its final settlement after the Revolution. The crown lawyers previously mentioned had given their opinion that, if the country had been settled under the grant of 1681, it would be a matter of doubt whether the right of the occupants, or the title under which they held, could be invalidated by a prior grant, without actual settlement. The company, whose membership was rapidly increasing, and which included many persons of prominence, especially in the General Court of Connecticut, determined to lay out 10,000 square miles of the purchase into shares. By the articles of association, each shareholder was bound within a given time to build a house, and clear a certain amount of land. Early in 1755 surveyors were sent by the company to lay out portions of the land along Lackawaxon creek, and in the Wyoming Valley. Accordingly, a settlement was made that year at Coshotunk near the Delaware, but a letter from the Earl of Egremont, founded on representations of the governor of Pennsylvania alleging that the settlement would occasion an Indian war, stopped further progress till 1760. About this time a large part of the 10,000 square miles had been surveyed, a few townships laid out, as well as mills and cabins built. Two years later several of the members of the company went in person, and commenced a settlement just below Wilkesbarre. In October of that year it was destroyed by the Indians.

As if just aware of the fact that some collisions between Pennsylvania and Connecticut settlers had taken place, the governor of the latter colony, in 1762, issued a proclamation against the intrusion of its inhabitants into Pennsylvania.¹

¹ In 1760 the proprietors had requested the secretary of state to direct the governor of Connecticut to stop the intrusion of his people, in order to quiet the complaints of the Indians, which were occasioned by trespasses committed on lands set apart for them by recent treaties. But he thought the Connecticut purchase of 1754 had been fairly made, and therefore that they should obtain the attorney-general's opinion. The Penns assured him to the contrary. Thereupon he referred the matter to Sir William Johnson. P. L. B., vi, T. P. to Hamilton, Dec. 10, 1760.

The complaints aroused by these quarrels and petty disturbances caused Sir William Johnson to write to the Board of Trade that he feared their injurious influence on the Indians. This led the king, in October, 1763, to direct that the contending colonies should each appoint commissioners to go to Wyoming and proclaim his commands that the intruders should depart and abandon their enterprise. The execution of the order was prevented by the outbreak of Pontiac's war. During its continuance the operations of the Susquehanna Company ceased. But it was not easily dismayed, and while preparing to send a large number of settlers, dispatched Col. Eliphalet Dyer with a petition to the king. While Dyer was still in England, and in defiance of the royal proclamation, the company resolved to have five townships, each five miles square, surveyed, and to grant each of these to forty settlers, on condition that they would remain on the ground and defend their claims against invasion. These townships were subdivided into sections of 400 acres, three of such sections being reserved for the ministry and schools. Though there had been a steady influx of settlers from Connecticut for fifteen years, the fact did not become very noticeable till 1769, at which time a stockade was erected and called "Forty Fort."¹

All these proceedings had been carefully observed by the Pennsylvania authorities. In 1754, Gov. Morris stated that, as some of the Connecticut people had persuaded a few frontier settlers to join them, he believed more vigorous measures than writing to governors and magistrates should be employed. He suggested that the women and children should be seized and sent back to Connecticut, but the men should be imprisoned for a brief period as a warning to others. "I don't doubt," said he, "that Connecticut will amuse and give good words till a great number be settled, and then bid defiance."² His view was not at first concurred in by the proprietors, because they believed the whole scheme to be merely the crea-

¹ Trumbull, p. 471; Hoyt, pp. 19-20.

² Hoyt, p. 18.

tion of some speculators and likely to fail. Indeed, they even favored such a settlement as a protection against the French, provided the Indians were not disturbed and that the settlers took their titles from Pennsylvania.¹ The governors of that province however realized the danger, issued several proclamations against the intruders, and sent letters to the Connecticut authorities setting forth the tendencies of such an illegal method of settlement.²

At length the proprietors awoke to the situation and leased for seven years to certain individuals 100 acres each within the disputed section, on condition that they would duly defend their property. In January, 1769, the lessees took possession of the blockhouse and cabins left by the massacred settlers in 1763, and laid out for the proprietors the manors of Stoke and Sunbury on the west bank of the Susquehanna, right in the heart of the valley.³ Previous to this time it is somewhat doubtful whether any land within the disputed region was held by settlers under grants from the Penns, whereas we have seen that under sanction of the company a number of settlers had already taken up claims.⁴ From the standpoint of possession, then, the balance is slightly in favor of the Connecticut claimants. The proprietors continued to offer special inducements to people who would hold their possessions against the Connecticut trespassers.⁵ The company in turn made very advantageous offers, so that many of the Pennsylvania settlers found it profitable to take titles from Connecticut.

Now begins that civil strife in miniature known as the

¹ Penn MSS., T. P. to Peters, Apr. 14, 1754.

² *Pa. Col. Rec.*, v, pp. 768, 774, 777; vi, pp. 255, 275.

³ For this reason, among others, many of the neighboring settlers sympathized with the Connecticut people.

⁴ Gov. John Penn, in his conference with the Connecticut commissioners in 1773, asserted that for many years land had been granted within the limits claimed by Connecticut. *Conn. Col. Rec.*, xiv, p. 475. But see Hoyt, p. 27.

⁵ P. L. B., ix, T. P. to John Penn, May 9, 1769.

"Pennamite and Yankee War." In February, 1769, the first "forty" Connecticut settlers arrived, and besieged the garrison in the Wilkesbarre blockhouse. When three of their leaders had been invited into the fort for conference, they were seized and sent to Easton. Here they were speedily bailed out, and returned to Wyoming. Then the "Forty Fort" was stormed by the sheriff and a posse from Northampton County, and the garrison treated as before. In April another detachment arrived and erected a fort. Again the sheriff with difficulty secured a posse, for most of the people in that region sympathized with the newcomers, and the same thing happened.

In 1770 the attention of the Board of Trade was called to these disturbances. In its report thereon, the Board condemned the outrages committed by both parties, but decided that the matter lay within the jurisdiction of Pennsylvania. The report, however, was caused by the fact that the persons employed by the company, when summoned before the Board, deprecated any violence and stated that they had had no instructions to defend the proceedings of the settlers, or to represent them as sanctioned by the government of their colony.¹ Thereupon the proprietors directed Gov. Penn legally to eject the intruders, or to receive them as tenants; but in event of an expensive contest, they intended to try their legal right by appeal to England.² But the futility of this scheme of receiving the invaders as tenants was too obvious to merit serious consideration. Emissaries from Connecticut busied themselves in stirring up the people against the jurisdiction of the proprietors, going so far that the Pennsylvania assembly in 1771 passed the riot act, with resolutions strongly condemning their actions, and offering a reward for their ap-

¹ Penn MSS., *The Wyoming Controversy*, Report of a committee of the Board of Trade, July, 1770.

² P. L. B., x, T. P. to Tilghman, Feb. 26 and March 27, 1770; to Fell, Feb. 7, 1770; to Richard Penn, July 24, 1770; to Wilmot, July 29, 1770; Penn MSS., *Private Correspondence*, v, Richard Penn to T. P., July 26, 1770.

prehension; in accordance with which the governor issued another proclamation.¹ But the struggle continued with unabated vigor.² Forts and blockhouses were built, besieged, and captured. Pennsylvania adherents were imprisoned in the forts of the New Englanders. Connecticut partisans were imprisoned at Philadelphia as hostages for the removal of the others, and prosecutions were commenced against the frontier settlers in order to prevent them from joining the intruders.³

The proprietors then petitioned the king in 1771 to have the boundary between Pennsylvania and Connecticut determined, but the Board of Trade adhered to its previous opinion.⁴ The president of the council in Pennsylvania wrote to Gov. Trumbull of Connecticut, inquiring by whose authority such violent measures were employed. He replied that the persons concerned had had no orders from himself or the General Court, and that he was sure the Court would not countenance any violence in vindicating the rights of the Susquehanna Company.⁵ The Pennsylvania assembly refused to have anything further to do with the disturbances, claiming that it did not affect the general government.⁶ Not long after this, in a conflict of arms, the Pennsylvania contingent was defeated and compelled to surrender.⁷ Pennsylvania temporarily desisted from the struggle; but the inhabitants of Wyoming continued to extend their settlements, laid out townships, erected fortifi-

¹ Penn MSS., *Private Correspondence*, v, Richard Penn to T. P., May 29, 1771.

² For the details see *Pa. Col. Rec.*, ix, and *Pa. Arch.*, 1st series, iv, *passim*; Miner, *History of Wyoming*, pp. 102-182; Pearce, *Annals of Luzerne County*, pp. 58-119.

³ P. L. B., x, Proprietors to Tilghman, Jan. 28, 1771.

⁴ P. L. B. x, Wilmot to John Penn, Dec. 12, 1771.

⁵ Hoyt, p. 22.

⁶ *Pa. Col. Rec.*, ix, pp. 680-7; Penn MSS., *Offic. Corresp.*, xi, R. Hockley to T. P., Feb. 29, 1772.

⁷ The articles of capitulation ran as follows: A certain number of armed men should depart unmolested; men with families might remain two weeks to remove their effects; and the sick and wounded should be allowed proper attention. Penn MSS., *The Wyoming Controversy*.

cations, levied and collected taxes, passed laws, and established a militia.

Meanwhile the General Court of Connecticut had appointed a committee to search for all evidences of title, and had sent to its agents in England all such evidences to be embodied in a statement which should be presented to the crown lawyers. We have seen what was their decision respecting the charter. Relying on their further opinion that, if the governor and company of Connecticut thought it prudent or expedient to make such a claim, it would be proper for them to apply to the king to appoint commissioners in America for the purpose of settling the matter, the Connecticut legislature, in October, 1773, resolved that it would support the claims of the colony under its charter. Thereupon commissioners were appointed to treat with Gov. Penn, and were instructed to join with him in an application to the crown for the appointment of commissioners to decide the controversy, or with him to agree upon measures to preserve order among the inhabitants.¹ A conference was thereupon held at Philadelphia in December, 1773. Gov. Penn, acting in the behalf of the proprietors, refused to join in an application to the crown, lest he should thereby admit the Connecticut claim, though he stated that the proprietors would readily answer any application which Connecticut separately might choose to make. The commissioners from that colony rehearsed all its pretensions by charter, Indian purchase and possession; and to facilitate the exercise of jurisdiction, proposed that the settlers from each colony should, until the dispute could be decided, register their names separately at an office erected for the purpose. They dwelt upon the delay and expense incident to a decision by the Privy Council, and believed that the affair could be best settled by agreement, or by reference to arbitrators from neighboring colonies. At any rate they desired a temporary line of jurisdiction to be established. Gov. Penn replied to their arguments,

¹*Conn. Col. Rec.*, xiii, pp. 366, 427, 518; xiv, pp. 161-2.

dilating particularly on the failure of Connecticut for ninety-two years to assert its claim. He stated that, as the disputed territory had been recently erected into a county, no temporary line could be run. He asserted, also, that the disturbances could not cease till the Connecticut people had left the region, and the case had been legally decided. The Connecticut commissioners answered that the acquiescence of Connecticut with regard to the Pennsylvania grant had no more weight than the acquiescence of Pennsylvania in the Connecticut grant. The negotiations, however, proved fruitless.¹

In January, 1774, the Connecticut legislature resolved that its agents in England should be instructed to prosecute the colony's claim. In answer to an application from the people at Wyoming, it also incorporated the town of Westmoreland with the following boundaries: east by the Delaware, north by the northern line of Connecticut, west by a north and south line drawn fifteen miles west of the valley, and south by the southern line of Connecticut. Though annexed to Litchfield County, Connecticut, the town was given practical autonomy.² At the same session the General Court enacted that suitable persons should be employed to ascertain the northern and southern boundaries of Connecticut, and the governor was desired to issue a proclamation forbidding any persons to settle any land in Wyoming without the consent of the General Court. In answer to this Gov. Penn of Pennsylvania, February 28, 1774, commanded that no regard should be paid to orders given by any person presuming to act by virtue of instructions from the authorities of Connecticut.³ Thereupon, in May, 1774, the Connecticut General Court resolved to petition the king to determine the boundaries, and the proprietors in turn asked the crown to render an opinion against this

¹ *Conn. Col. Rec.*, xiv, p. 465 *et seq.* *Pa. Col. Rec.*, x, pp. 111, 118-128, 153.

² *Ibid.*, xiv, p. 218.

³ *Pa. Col. Rec.*, x, p. 153.

petition, lest by any attempt to decide the boundaries the claim of Connecticut might be admitted.¹

In response to this request of the proprietors, and for the purpose of examining the case preparatory to the issue of such an opinion, the Board of Trade summoned before it the Connecticut agents. But because American affairs had become so threatening, that action upon the petition was deferred till the proprietors gave up in despair. At one time war between the two colonies seemed inevitable. In December 1775, Col. Plunkett of Northumberland county, in which the Wyoming Valley was largely situated, with about five hundred men, acting under orders from Gov. Penn, endeavored to drive out the settlers. About three hundred of them at Nanticoke repulsed him, with considerable loss on both sides. Then Congress interfered with a resolution that the contending parties should cease hostilities until the dispute could be legally settled.

Soon after the surrender of Cornwallis the supreme executive council of Pennsylvania, in accordance with the ninth article of the constitution of 1781, petitioned Congress to establish a court to determine the matter. Congress complied, and August 28, 1782, appointed seven commissioners, five of whom, November 19, organized the court at Trenton. On the thirtieth of the following December, they decided that the state of Connecticut had no right to the lands, and that the preëmption and jurisdiction of the territory belonged to Pennsylvania.² Connecticut acquiesced in the decision, and in 1800 renounced by legislative act all territorial and jurisdictional claims to any section of country west of the eastern boundary of New York.³

¹ *Conn. Col. Rec.*, xiv, p. 262; Penn MSS., *Offic. Corresp.*, xi, Wilmot to John Penn, Aug. 11, 1774.

² *Pa. Arch.*, 1st series, ix, pp. 679-725.

³ Hoyt, pp. 47-48.

III

Virginia.

In 1749 George II was induced to grant 500,000 acres of land on the branches of the Ohio to an organization known as the Ohio Company, most of whose members were residents of Virginia. The purpose of the grant was to establish a settlement as a barrier for the colonies against the French, and as a means of monopolizing the trade of the western Indians.¹ Since Virginia by the charter of 1609 had a somewhat indefinite claim to all lands west and northwest of her coast line, and extending to the Pacific, and in order to prevent such difficulties as might arise from the settling of large tracts west of the mountains, the proprietors at once tried to obtain a royal order for the running of the boundary line between Virginia and Pennsylvania,² but their effort failed. Thereupon they made an agreement with members of the Ohio Company in England that they would instruct the governor of Pennsylvania to enter into any reasonable measures to assist the governor of Virginia in building a fort on the Ohio, with the stipulation that the latter would give assurance that the settlement thus made should not be prejudicial to the rights of the proprietors in that region, and that *bona fide* settlers should be secured in their tenure. In case any of the company's land fell within the limits of Pennsylvania, it was agreed that it should be held of the Penns. In turn the proprietors promised that in case the settlements of the company did extend into Pennsylvania, they would grant the land free of quit rent for seven years or more, provided that it should not be held for speculation; and ex-

¹ P. L. B. iii, T. P. to Hamilton, Aug. 27, 1750, *Col. Rec.*, v, p. 423.

² Penn MSS., *Offic. Corresp.* iii, J. Hamilton to T. P., Jan. 2, 1749; R. Peters to T. P., May 16, 1749; *Ibid.*, *Supp. Proc.*, T. P. to Peters, Aug. 2, 1749.

pressed their willingness to furnish suitable munitions for blockhouses and other fortifications.¹

For the purpose of checking the encroachments of the French, it was determined in 1754 to build a fort on the site of the present city of Pittsburgh. Hence Gov. Dinwiddie of Virginia issued a proclamation, February 19, 1754, offering as an encouragement to volunteers, 300,000 acres on the east side of the Ohio, one-half of which was to adjoin the fort, and the other half was to lie on or near the Ohio. These lands were to be divided among the volunteers in order of merit at the completion of their term of service, and to be granted free of quit-rent for fifteen years. The proposition having been transmitted to Gov. Hamilton of Pennsylvania, that officer answered, March 13, 1754, that he believed the fort and lands were within Pennsylvania,² and in behalf of the proprietors offered the territory on the same conditions. He asked Dinwiddie for an acknowledgment of the proprietors' rights. Dinwiddie replied that the Virginia surveyors did not consider that the forks of the Monongahela lay within the grant to the Penns; but he agreed to send a request to England to have the boundaries ascertained. If the territory was within Pennsylvania, however, he thought it reasonable that the quit-rent should be paid to the proprietors, at the expiration of the specified fifteen years. As the fort was later captured by the French, the military grant never took place, but various settlements were made by permission of Virginia.³

The Penns desired to avoid giving the people of Virginia any reasonable cause for dissatisfaction. But at the same time they feared that the Virginians might get control of the trade on the Ohio, and through that be led to form just such settlements there. Hence they directed Gov. Hamilton to secure it,

¹ P. L. B., iii, T. P. to Hamilton, March 9, 1752, and iv, to Peters, Aug. 13, 1755; Penn MSS., *Supp. Proc.*, T. P. to Peters, May 31, 1754.

² Cf. *Col. Rec.* v, pp. 423-4, 758-62. ³ Smith, *Laws of Pa.*, ii, pp. 130-2.

so far as that could be done without passing beyond the limits of the province. But as the western boundary had never been accurately surveyed, if surveyed at all, and as therefore its location was not definitely known, this injunction amounted to little. The Virginians made a formal treaty for trade with the Indians, though their declared intention was not to prevent them from trading with the other provinces. The proprietors feared lest the purchases of the company might become too extensive, since by building a fort and making other preparations it had shown a purpose vigorously to push colonization. But it was not until about 1770 that the government of Virginia began to take an active interest in its colony on the Ohio. The idea was then advanced that a new province in that region would promote British interests. The proprietors in turn began to take active measures to have large tracts surveyed there, as well as to have the boundary lines run. But the settlers in that region were still so few that there seemed to be no immediate danger of a collision. Soon after, however, as the people commenced flocking in, disputes began between settlers from the two provinces. Thereupon the Penns petitioned the king, in April, 1773, to fix the western limits.¹ Lord Dunmore, governor of Virginia, then came forward with a denial that Pittsburg was within the limits of Pennsylvania.² This he based on the fact that at the request of Dinwiddie in 1754 Virginia had built forts on the Ohio. As the Pennsylvania assembly did not contribute toward the building of these forts, the plea was urged that it did not consider the territory on which the forts were located to be included within the bounds of

¹ In 1772, a grant similar to that to the Ohio Company was made to an organization of which Franklin was a prominent member. Franklin, *Works*, III, p. 69, *et seq.*; IV, p. 233, *et seq.*, 302-374; VII, pp. 355-6.

² Dunmore seems to have been actuated by a desire to arouse Virginia in opposition to Pennsylvania, with a view to its possible effect on the approaching conflict between the colonies and the mother country. Indeed, for this purpose he spent some time at Pittsburgh. *New York Col. Doc.*, viii, p. 209.

that province. In assertion of this claim the Virginia government assumed jurisdiction at Fort Pitt. Commissioners were sent from Pennsylvania to Virginia to induce Dunmore to join in applying to the crown for directions to run the line, and in the meantime to establish a temporary limit of jurisdiction, since by reason of the dispute about Fort Pitt the county of Westmoreland on the Pennsylvania frontier had been thrown into confusion. To the latter request Dunmore refused to accede, while to the former he would agree only on condition that Virginia should bear no part of the expense. Therefore, when a number of discontented settlers applied to him for protection, he assumed control over most of Westmoreland county, thus extending his jurisdiction over territory some of which lay fifty miles within the limits of Pennsylvania. He placed in command a man named Connolly, who arbitrarily seized a number of the county magistrates and sent them to Virginia, but upon the protest of Governor Penn they were released.¹

Dunmore ordered Fort Pitt to be rebuilt, though Dartmouth, the secretary of state, subsequently required its destruction lest its existence might needlessly offend the Indians. Dunmore then issued a proclamation,² April 25, 1774, commanding the officers and militia at Fort Pitt to repel any insult offered by the Pennsylvania government, and enjoining the inhabitants to pay quit-rent to the king.³ Lands were freely granted by the Virginia officials, and persons holding land presumably under the Pennsylvania title were in some cases dispossessed. It is not unlikely, however, that the excesses committed were

¹ Penn MSS., *Offic. Corresp.*, xi, Tilghman to Wilmot, July 18, 1774.

² *Pa. Arch.*, 1st series, iv, p. 490.

³ At the time the bill for settling the boundaries of Canada was before parliament, the proprietors feared that these boundaries might be extended as far south as the Ohio. This would have cut off a large part of Pennsylvania. To their relief, however, a clause was inserted, providing that the boundaries of Canada should not affect any rights by charter, or any lands already granted. P. L. B., x, T. P. to Tilghman, June 16, 1774.

due more to petty feuds among the settlers themselves than to any direct acts of violence countenanced by the Virginia authorities.

In order to quiet these disturbances along the frontier, the Board of Trade ordered commissioners to be appointed to settle the boundaries, in which act it was desired that the adjoining colonies should concur. In reply to the plea of the representatives from Pennsylvania for a temporary line of jurisdiction, Dunmore stated that the proprietors had not duly supported their claims against the French. Moreover, he believed that the words of the charter did not mean, as the Pennsylvania commissioners insisted, that the western boundary line should follow in general the winding and turning of the Delaware, but that a meridian line should be drawn five degrees west of that river, from the northern limit of the province to the Mason and Dixon boundary on the south.¹ He reminded them at the same time that he was acting for the king. But the negotiations proved fruitless, each party accusing the other of faithlessness and dishonesty.²

In June, 1775, the Board of Trade revived the petition of the proprietors that the northern and western boundaries of the province might be settled. After it had considered the negotiations of the Pennsylvania commissioners with Dunmore, it expressed the opinion that a line of temporary jurisdiction should be drawn due north from the mouth of Redstone creek to the Ohio. It was disposed, however, to question the title of the Penns to the land in the vicinity of Fort Pitt, on account of their failure to provide for its defence. At the hearing before the Board it was answered that whatever might be the opinion of the Board on this point at a time

¹ The opinion of the proprietors evidently changed during the three years subsequent to 1771, because at that time they certainly favored a straight line as the western boundary of Pennsylvania. P. L. B., x, T. P. to Tilghman, Feb. 26, 1770; Wilmot to John Penn, Dec, 12, 1771.

² Penn MSS., *Penna. and Va.*, Dunmore to Tilghman and Allen, and *vice versa*, May, 1774.

when the situation of Fort Pitt was not ascertained, former presumption ought to give way to subsequent observation. It was urged that the Pennsylvania magistrates had exercised peaceable jurisdiction there, until driven away or imprisoned by Dunmore's officers. Therefore, the Penns thought it was unjust to put them in the position of plaintiffs, who were required to make out a title to lands against which no counter-title except force could be set up. They looked upon the Monongahela as a natural boundary about which the ingenuity of commissioners could not raise objections, as would be the case if a temporary line was run. Finding that the Board did not favor this proposition, they offered to fix the Yohiogany river as a temporary boundary. This would still have included Fort Pitt within Pennsylvania, a fact that the Board was unwilling to allow. Hence the matter was postponed; but on account of the outbreak of the colonial revolt no further action was taken¹. During the progress of the Revolution Virginia proposed that, in order to complete Pennsylvania's southern boundary, the Mason and Dixon line should be extended due west from the Delaware through five degrees of longitude, and that from the western extremity of this line another should be drawn due north to the northern limits of the state. These propositions were finally ratified in an agreement between the two states, dated April 11, 1784.²

IV

New York.

THE locating of 43° north latitude caused some controversy with New York. As early as 1738 the attention of the Board of Trade had been called to the probability of disputes among the inhabitants on the border, when territory in that region should be settled.³ Thirteen years later, in answer to the

¹ P. L. B., x, Juliana Penn to John Penn, April 15, 1775; Penn MSS., *Penna. and Va.*

² Smith, *Laws of Pa.*, ii, p. 132.

³ *N. Y. Col. Doc.*, vi, p. 125.

Board of Trade's letter of that date desiring information concerning the boundaries of the several colonies, Gov. Hamilton of Pennsylvania stated that that province was bounded on the north by New York and a part of Lake Ontario, of Lake Erie, and of the country possessed by the Six Nations. This would make 43° fall about 40 miles north of Albany.¹ The governor of New York naturally interposed vigorous objections to such an opinion, and soon after granted a warrant of survey to Sir William Johnson and others for a huge tract of land on the eastern branch of the Susquehanna. Hamilton, believing that this territory was within the boundary of Pennsylvania as outlined by the royal charter, requested Gov. Clinton to inform the warrantee that the proprietors preferred to have the northern boundary settled, but, if in any event the land should be surveyed, he desired that the proprietary officers might enter a caveat against the granting of any patent therefor. The proprietors then petitioned the king to order that the boundaries should be determined. Receiving no definite response, they told the Board of Trade that several of the inhabitants of New York had attempted to procure grants from the Indians, or patents from the governor of that province for lands within Pennsylvania territory, not for the purpose of settlement, but merely for speculation.² The Board, however, did not see fit to take any steps in the matter.

Knowing that the authorities of New York expected to fix the northern boundary of Pennsylvania at 42° north latitude, the proprietors in 1755 hinted to Robert H. Morris, governor of the latter province, that, when a purchase should be made from the Indians, it would be advisable to have the northern boundary of Pennsylvania extended without mention of any particular degree, lest thereby they should lose any

¹ At the same time he wrote to Gov. Clinton, of New York, that he believed 43° was not much south of the latitude of Albany. This shows how vague were the ideas of latitude and longitude. *Ibid.*, p. 748; Hoyt, *Syllabus*, etc., p. 40.

² P. L. B., iii, T. P. to Peters, Oct. 27, 1752; to Halifax, Aug. 14, 1753.

part of the three degrees intended by the royal charter.¹ This plan seems to have been followed in subsequent purchases, in 1758 and 1768.² Occasionally grants of land within territory claimed by the Penns were made by the governor of New York. Against this practice they petitioned the king in 1773, and again in 1775. In the latter year, at the suggestion of the Board of Trade, commissioners appointed by the governors of both provinces selected a stone on an island in the Delaware River, from which the northern boundary of Pennsylvania should be determined.³

After the Revolution commissioners were again appointed, March 31, 1785, to ascertain the northern line; but the line they ran in 1787 terminated a few miles south of Lake Erie. Considerable dissatisfaction resulted, for local surveyors had fixed a line several miles north of that of the commissioners. Hence in October 1788, by permission of Congress, the Pennsylvania assembly authorized the supreme executive council of the state to purchase the Indian title to the territory included between the lines; and the following year the Indians ceded the region as far north as Lake Erie. This, agreeably to the cession from New York and Massachusetts to the United States, was bounded on the east by the west line of New York. The line as fixed at 42° was ratified by both states, September 29, 1789.⁴

¹ We have seen in the discussion of the Maryland dispute that the parallels 40° and 43° were regarded as beginning the fortieth and forty-third degrees. This being the case, the proprietors by charter would be entitled, according to the limited geographical knowledge of 1681, to all territory as far as about fifteen miles north of the present city of Binghamton. Properly speaking, however, the parallel 42° begins the forty-third degree.

² *Pa. Arch.*, 1st series, ii, pp. 370-1; Smith, *Laws of Pa.*, ii, p. 122.

³ Penn MSS., *Penna. and Va.*, Petition of Thomas and John Penn, March, 1773, and February, 1775; and Board of Trade Report, June 1, 1775; *Ibid.*, *Offic. Corresp.*, xi, J. P. to Wilmot, Jan. 30, 1775.

⁴ Smith, *Laws of Pa.*, ii, p. 130.

PART II

GOVERNMENT

CHAPTER I

THE IDEA OF WILLIAM PENN.

HAVING completed our review of the land system of Pennsylvania, we may now examine somewhat at length the characteristics of the government proper. In other words, we turn from the territorial side of the proprietary system to its governmental side. As we are dealing with an organic structure, it follows from the very nature of the subject, that territorial relations and government cannot always be clearly distinguished. A boundary line, clear and plain at all points, cannot be drawn between them. It was often through governmental action that the territorial system was regulated, while on the other hand, political struggles frequently arose out of questions connected with the proprietary estates. But, though one cannot in all respects clearly distinguish between two spheres of activity, it is possible to do this satisfactorily in the main, and along broad and familiar lines. Under the head of government fall naturally the powers, purpose, and policy of the proprietors, and the effects that changes in the condition and make-up of the proprietary family had on these. There belongs the discussion of the proprietary charters or frames of government, those documents of fundamental importance by which the proprietor limited and defined the exercise of his powers. The description of the organs of government, their functions and relations, the social elements and political tendencies which were operative among the colonists, the way in which colonists and proprietors came into collision, all these matters are properly treated under the head of government. In close connection with these lies the history of the contro-

versies between the proprietors, or their deputy governors, and the assembly, the body through which popular sentiment found expression. These disputes constitute much of the political history of the province, the part in fact which is of chief importance for our purpose. Finally comes the outline of relations with the home government, and the culmination of the disputes between proprietors and people, which, when taken in connection with the revolt of the colonies, led to the collapse of the proprietary system.

We have thus indicated the field which must be covered in the course of the discussion of government in Pennsylvania. In order to show with what powers of government William Penn and his sons were invested, it will be proper to cite the provisions of the royal charter which bore directly thereon. In the preamble is stated the desire of William Penn to enlarge the British empire, and thereby to promote the advancement of its trade and commerce, and his intention to educate the savages carefully in the principles of Christianity. Then follows his request to be granted the territory, to transport a colony, and to be endowed with whatever powers might be requisite for its safety and good government. To this end the proprietor, his heirs, deputies and lieutenants, were given power to make and under their respective seals to publish any laws with the advice and approbation of the freemen, or of the majority of them, or of their representatives, who should be assembled as often as necessary, and in such form as to the proprietor and themselves should seem best. But for matters that might require a remedy before the assembly could be summoned, the power to issue ordinances was granted to the proprietor and his deputies. Such ordinances, however, should be reasonable, and so far as possible in accordance with the laws of England, and were not to injure personal or property rights. In order to insure the allegiance of the proprietor and of the freemen, the charter provided moreover that neither the proprietor nor the freemen should maintain correspondence

with any king, prince or state in war against England; nor should they commit any act of hostility to any power in amity with England. Secondly, a duplicate of all laws should within five years after their enactment be sent to the Privy Council in England. If any of the laws so transmitted should within six months after the date of their reception be declared inconsistent with or contrary to the sovereignty or lawful prerogative of the crown, the laws, statutes and rights of England, or the faith and allegiance of the grantees and of the freemen, and therefore adjudged void by the crown under privy seal, then such laws should be considered repealed. But if they were not so annulled within the time specified, they should remain in full force. Thirdly, the grantee should appoint an agent to reside in or near London, who should be ready to appear in any court at Westminster to answer for misdemeanors, willful faults, or neglect permitted against the laws of trade. After damages had been ascertained, the grantee should within a year make full satisfaction therefor. Until this was done it was declared lawful for the crown to seize the government, but this proceeding should not affect private rights.

The right was also given to the proprietor and his lieutenants to appoint judges and all other officers, and to endow them with suitable powers, to establish judicial tribunals, and to outline their functions and forms of procedure. Judgments rendered by these tribunals should be absolute and available in law, but the crown should have the right to hear appeals from Pennsylvania against such judgments. The power of granting pardons was also given except in cases of treason and murder, when a reprieve should be allowed until the royal pleasure thereon was known. Moreover, full privileges of commerce and transportation were granted to the proprietor and the inhabitants of the province. To the proprietor also was given the right to establish harbors, seaports and the like, and to receive the customs and subsidies therein, as assessed by himself and the freemen. Officers appointed by the com-

missioners of customs, however, should be permitted to attend to their duties in these ports. No taxes, except those which were customary or which might be levied by act of parliament, should be imposed upon the proprietor and the freemen. Power was also given to Penn to divide the country into counties, hundreds and towns, to erect and incorporate towns into boroughs, and boroughs into cities, "with all convenient privileges and immunities according to the merits of the inhabitants, and the fitness of the places." He was likewise entrusted with the powers of captain-general, to levy, train, and muster the inhabitants, and to wage war even beyond the territorial limits of the province. At the solicitation of the Bishop of London, a clause was also introduced into the charter commanding that, when twenty or more of the inhabitants should so desire, ministers approved by that ecclesiastic should be sent to Pennsylvania. All officers of the crown were commanded to assist the proprietor when necessary, and, in event of misunderstanding, the interpretation of any word or clause should be most favorable to Penn.

Being in possession of these powers, Penn was now ready to found his colony in America. The occasion of his application to the crown for permission to found a colony has already been described. The cause lay much deeper. The character of William Penn, it may be said, has suffered as much at the hands of his friends and eulogists, as it has under the sharp thrusts of Macaulay's hostile criticism.¹ He may be briefly characterized as a seventeenth-century idealist of the more attractive and genial type, one whose knowledge was as extensive as his piety, whose reputation as a courtier² was second

¹ Macaulay, *History of England* (Porter and Coates Ed.), i, pp. 456-8, 585, 590; ii, 206, 221, 268, 273, 277; iii, 524; iv, 105, 139.

² *Ibid.*; *Chalmers' Political Annals of the Revolted Colonies*, p. 635. Referring to the contest with Lord Baltimore, William Penn, in 1684, wrote to the Marquis of Halifax (*Mem. Pa. H. t. Soc.*, i, pt. ii, p. 421), "I only pray that my case may be remembered and recommended to the king by my noble friend, the Mar-

only to his capacity for religious enthusiasm, and who, though benevolent, never lost sight of private advantage. Though the grant of Pennsylvania was made partly in payment of a debt, the chief object of Penn in establishing the colony was certainly not pecuniary gain.¹ He perceived that the vast wilderness of which he had become proprietor, must for an indefinite time be a source of vexation and expense. Still, his philanthropic schemes did not entirely exclude the thought of gain.²

quis of Halifax. I am not to be blamed for this liberty, when it shall be considered how great a place his wit, honor and abilities have with the king, and how much and with what success he has acted the friend to my poor concerns." Writing to another courtier about the same time, he spoke with pride about the "station in which it had pleased his imperial majesty to place him in his American empire." Referring again to Baltimore, he said, "I tell them that our great Justinian must issue this difference, take this fort, and get the victory." *Ibid.*, iv, pt. i, p. 183 *et seq.* Any one at all acquainted with the character of Charles II. will at once perceive the adulation and flattery in this reference to him as the "great Justinian." Such a tone of deferential humility toward courtiers and crown appears in bold contrast to his supposed renunciation as a Quaker of all worldly titles and blandishments.

¹ The fact that Penn died in comparative poverty, and endeavored to dispose of the government of the province to the crown, is a sufficient answer to Benjamin Franklin's sneer, that the proprietor united "the subtlety of the serpent with the innocence of the dove." *Works*, iii, p. 123.

² "I cannot make money without special concessions. Though I desire to extend religious freedom, yet I want some recompense for my trouble." Penn MSS., *Domestic Letters*, William Penn to —, July, 1681. "Prepare the people to think of some way to support me so I may not consume all my substance to serve the province." *Ibid.*, to Thomas Lloyd, Oct. 2, 1685. "Make no further mention of the supply; I will sell the shirt off my back before I will trouble them any more. I will not come into the province with my family to spend a private estate to discharge a public station, and so add wrongs to my children." *Ibid.*, to J. Harrison, Jan. 28, 1687. Speaking of Baltimore's attempt to deprive him of the Lower Counties, he wrote to the Marquis of Halifax (*Mem. Pa. Hist. Soc.*, i, pt. ii, p. 421), "I have led the greatest colony into America that ever any man did on private credit, and the most prosperous beginnings that were ever in it are to be found among us. If this lord, who may remember that his country was cut out of Virginia, and this not for debt or salaries due, but as mere grace, shall carry away this poor ewe lamb too, my voyage will be a ruinous one to me and my partners, which God defend."

In order to ascertain the real motive of Penn in founding the colony, it may be well to notice what he himself says on the subject. His letter of April 8, 1681, directed to the settlers already in Pennsylvania, reads as follows: "My friends, I wish you all happiness here and hereafter. These are to let you know that it hath pleased God in His providence to cast you within my lot and care. It is a business that though I never undertook before, yet God has given me an understanding of my duty, and an honest mind to do it uprightly. I hope you will not be troubled at your change and the king's choice; for you are now fixed at the mercy of no governor who comes to make his fortune. You shall be governed by laws of your own making, and live a free, and if you will, a sober and industrious people. I shall not usurp the rights of any or oppress his person. God has furnished me with a better resolution, and has given me His grace to keep it. In short, whatever sober and free men can reasonably desire for the security and improvement of their own happiness, I shall heartily comply with. I beseech God to direct you in the way of righteousness, and therein prosper you and your children after you."¹

To James Harrison, September 4, of the same year, he wrote, "I bless the Lord in obtaining it, and were I drawn inward to look to Him, and to owe it to His hand and power to any other way, and I have so obtained it, and desire that I may not be unworthy of His love, but do that which answers His kind providence, and serve His truth and people, that an example may be set up to the nations, there may be room there, but not here for such a *holy experiment*."² "I went thither," said he on another occasion,³ "to lay the foundation of a free colony for all mankind, more especially those of my own profession, not that I would lessen the civil liberties of others because of their persuasion, but screen and defend our

¹ Hazard, *Annals of Pa.*, p. 502.

² *Ibid.*, p. 522.

³ *Penn and Logan Corresp.*, i, pp. 373-4.

own from any infringement on that account." "It was not to be thought," wrote he to James Logan about the same time, "that a colony and a constitution of government made by and for Quakers would leave themselves out of so essential a part of the government as juries. If the coming of others shall overrule us that are the originals and made it a country, we are unhappy that it is not to be thought we intended no easier nor better terms for ourselves in going to America, than we left behind us."¹ Lastly, his religious idea may be shown by his reply to the complaints of Jasper Yeates, a somewhat bigoted Quaker, who believed that the powers of government should be in the hands of the Quakers exclusively. "I suppose," wrote Penn, February 5, 1683, "that thou intendest that God's power among honest Friends should have the rule and dominion * * * * with my whole soul, Jasper. Besides, tell me what will those *Jetheses Centurions* and *Gamaliels* think who in outward things that belong to the spirit of man are rightfully interested as well as we—and have wisdom as men? Shall they neither choose nor be chosen? If not, the patent is forfeited, for that right is founded upon civil, not spiritual freedom. We should look selfish, and do that which we have cried out upon others for, namely, letting nobody touch our government but those of their own way. * * * * I could speak largely of God's dealings with me in getting this thing (Pennsylvania), what an inward exercise of faith and patience it cost me in passing. * * * * My God hath given it me in the face of the world, and it is to hold it in true judgment as a reward of my sufferings. * * * It is more than a worldly title and patent that hath clothed me in this place. * * * Had I sought greatness I had stayed at home, where the difference between what I am here, and was offered if I could have been there in power and wealth, as wide as the places are. No, I came for the Lord's sake."²

¹ *Penn and Logan Corresp.*, i, p. 205.

² *Pa. Mag. Hist.*, vi, pp. 469-70.

A perusal of these statements leads to the conviction that Penn's religious enthusiasm had awakened in him the idea that he was, in some measure at least, inspired of God to found a colony in which every form of religious belief, not distinctly polytheistic and anti-Christian,¹ should be tolerated. Settlers from all nationalities and representing every type of Christian faith or fanaticism should be welcome. Only those who denied the existence of God should be excluded. It was natural that he should feel the strongest interest in the welfare of his own sect, but Pennsylvania was not intended exclusively as a refuge for Quakers. The spirit of William Penn was not that of the Puritan who desired to make New England the possession of the saints alone, and who labored to shut out all who did not hold religious views identical with his own. His plan was nobler and broader than this. His views were those of the enlightened lover of humanity. He desired that some secluded spot might be chosen where, under the most favorable conditions, purity and virtue might flourish till they appeared in bold contrast with the immoralities of the age, where freedom of religious belief and practice might be enjoyed, and where truth and Christian charity might triumph over all that was narrow and persecuting.

To give an exhaustive definition of Penn's scheme of government is impossible. Did he purpose to form a Quaker commonwealth? His liberal concessions in the first frame of government and the character of the early legislation² in the province, would seem to show that he intended to establish a commonwealth of which the governing body should be Quak-

¹ See preamble and chapter i. of the Great Law of 1682. *Charter and Laws of Pa.*, p. 107.

² "Be it further enacted that the days of the week and the months of the year shall be called as in the scripture, and not by heathen names, as are vulgarly used, as the first, second and third months of the year, and first, second and third days of the week, and beginning with the day called Sunday, and the month called March." *Charter and Laws of Pa.*, pp. 116, 198, and *passim*.

ers. Men of other forms of religion were not to be denied a voice in the management of affairs, but the idea was to keep the control, so far as possible, in the hands of the Quakers. The proprietor should be merely the permanent executive to perform their commands. But this view of the matter is unsatisfactory, for two reasons. In the first place, Penn was the proprietor and governor of the province. As such he represented the crown. In the excitement of the moment, and beset by the importunities of his followers,¹ this position was lost sight of. Sooner or later he must recognize the fact that he could not give up at pleasure the prerogatives of the crown, with which he was entrusted. Secondly, a close study of the character of William Penn, as exemplified in his writings, shows him to have been distinctly paternalistic in his attitude and tendencies.²

His career as a religious teacher, and the awe with which many of his converts regarded him, would also serve to confirm this idea. He believed that he had a great humanitarian mission to fulfill. He thought his followers were with him heart and soul in the accomplishment of this purpose. His influence over them was apparently very strong. His attractive and benevolent personality, and his wonderful talents, ought to make him the head of the little community in the wilderness. The thought that anything but the truest harmony would reign in the place where now his holy experiment was to be put to the test, or that discord, bitterness, and personal animosity could ever possess the hearts of the gentle, peace-loving Quakers, probably never entered his mind. Nor did he believe that suggestions on his part would meet with anything but a cordial response and acquiescence. He had known what was their highest good spiritually. Endowed as he was

¹ Gordon, *Hist. of Pa.*, p. 63.

² Benjamin Franklin's covert sneer, that "Penn was first followed by his flock as a kind of patriarch to Pennsylvania" (*Works*, iii, p. 184), is not wholly devoid of truth.

with all the brilliant attainments that natural genius, social position, travel, education, and association with men could give him, he had shown himself an excellent student of politics. Why should he not be regarded as the source of all wisdom in matters pertaining to government? Even should dispute arise, his mild intervention would speedily cause its cessation. Hence, in the execution of his plan, and within the self-imposed limits of his frame of government, he was to direct as a father,¹ and his people to render due obedience as children. He intended in fact to spend the greater part of his life in the province, and to leave it as a place of residence to his children.² A distinctly personal government permeated with the principle of religious liberty was the gist of his idea³ of the proper mode for developing his "holy experiment."

But notwithstanding his large experience with men, Penn did not know them. As Macaulay truly says, "his writings and his life furnish abundant proofs that he was not a man of strong sense. He had no skill in reading the characters of others. His confidence in persons less virtuous than himself led him into great errors and misfortunes. His enthusiasm for one great principle sometimes impelled him to violate other great principles which he ought to have held sacred."⁴ He was not at all conscious of the extent of the concessions he was mak-

¹ "I shall do the best I can for future safety to the people and my family as one common interest." *Penn and Logan Corresp.*, i. p. 73. "The governor is our *pater patriæ*, and his worth is no new thing to us." *Ibid.*, p. 40.

² "I would gladly see you once more before I die, and my young sons and daughter also settled upon good tracts of land for them and theirs after them to clear and settle upon, as Jacob's sons did." *Mem. Pa. Hist. Soc.*, i, pt. i, p. 211.

³ This is well illustrated in his letter to Capt. Markham, who, it will be remembered, had been sent over to take possession of the country. He says, "Strive to give content to the planters, and with meekness and sweetness mixed with authority, carry it so as thou mayest honor me as well as thyself. Be tender of my credit with all, watching to prevent false stories, and inculcate all honest and advantageous things on my behalf." *Pa. Mag. Hist.*, vi, p. 465.

⁴ *Op. cit.*, i, pp. 457-8.

ing. If he could have anticipated the ingratitude and obloquy with which he later met, it is doubtful whether his liberal tendencies would not have received a decided check, and been made to conform both to justice to himself, and to a correct view of the actual needs of the people. "The sacrifice of Penn's life," says the editor of the Penn and Logan correspondence,¹ "was his establishment of Pennsylvania. He had ventured everything upon it, and underwent an unceasing struggle to preserve it. His expenses were enormous,² and his just returns, which it had been solemnly contracted should be paid, were in the main withheld by an ungrateful people, who, running riot with an excess of liberty, raised all manner of untenable objections against the performance of their duty; a people who, possessed of every substantial right, were yet dissatisfied, but who would have been very humble and repentant, had they been deprived of those privileges which they did not seem to know how to value and enjoy."³ Not until he found himself opposed at every turn, his requests disregarded, his official position ignored, and himself visited with complaint and invective, did he perceive his error. "I pretty well know my own interest," wrote he to James Logan in 1705,"⁴ though my too kind nature to serve others has neglected it. I hope it shall not be the error of the last part of my life."

¹ i, pp. 351-2. *Note.*

² "Nor am I sitting down in a greatness that I have denied, as thou suggestest. I am day and night spending my life, my time, my money, and am not six pence enriched by this greatness. Costs in getting, settling, transportation, and maintenance, now in a public manner at my own charge, should be duly considered, to say nothing of my hazard and the distance I am from a considerable estate, and my dear wife and poor children. Nor shall I ever trouble myself to tell thee what I am to the people of this place in watchings, travellings, spendings, and my servants, every way freely." William Penn to Jasper Yeates, *Pa. Mag. Hist.*, vi, p. 470.

³ See also Dixon, *Life of Penn*, Amer. Ed., 1851, p. 319.

⁴ *Penn and Logan Corresp.*, ii, p. 74.

The best way to show how the kindliness and benevolence of the proprietor gave place to wrath and bitterness, only to be succeeded by the spirit of Christian forgiveness as the shadows of his life touched the borders of eternity, is by an examination of his personal relations with the colonists. But some knowledge of the state of affairs which prevailed in the province during the period of his mental activity, is requisite to an understanding of these changes in his attitude. Hence, as the purpose of the foregoing discussion has been merely to indicate in a general way the idea of William Penn, it may perhaps be well to defer any explanation of his policy till, in the chapter on the frames of government, his relations with the colonists can be closely examined.

CHAPTER II

CIRCUMSTANCES OF THE PROPRIETARY FAMILY

1. *Mortgage and Litigation.*

WE have shown how exaggerated were the estimates of the wealth of the proprietors. The enormous expenses entailed upon Penn himself by his ventures in the province, as well as the disgrace under which he lay for his supposed complicity with the Jacobites, greatly reduced his resources. Indeed, the expenses connected with settling the colony were so considerable, that he was forced to mortgage a part of his first wife's inheritance. The war in Ireland greatly impaired his estates there. The revenues from Pennsylvania were scanty and irregular.¹ He was compelled to pay the salaries of the deputy-governors, attorney-generals, and chief justices. He was constantly employed in attempting to refute the insinuations against Pennsylvania for its connivance at illegal trade. The rascally conduct of his steward, Philip Ford, and the refusal of those he supposed to be his friends in the province to give aid when the clouds of misfortune gathered about him, at last wrung from him the cry, "I am a crucified man between injustice and ingratitude there, and extortion and oppression here."² Indeed, it was estimated by Penn that, prior to 1688, he had lost over £13,000, and during the first twenty-five years of his proprietorship he had lost over £64,000.³

¹ "I have a rough people to deal with about my quit-rents, that can't pay a £10 bill; but draw, draw, draw still upon me." Hazard, *Reg. of Pa.*, iv, p. 105.

² *Penn and Logan Corresp.*, i, p. 60; ii, p. 71; *Col. Rec.*, ii, p. 239.

³ *Breviat of Evidence*, Penn and Baltimore, p. 82.

The assembly utterly ignored Penn's misfortunes. In 1705 it stated that what the province had done for the support of government would more than equal what the proprietor had done for the province. When he was unable to grant all it demanded, the inability was attributed to unwillingness on his part. It complained that the proprietor expected it to pay the salary of the deputy governor, an obligation which it viewed as a hardship, "considering that the proprietor's stay in England was for the service of that nation, and the disservice of the province, by the loss of many thousand pounds to himself, and many hundred families to the province." It looked upon the failure to determine the boundary line with Maryland as a great grievance. It thought that a bill of property which it had presented to the deputy governor at that time would better secure the proprietor in some portions of his estate than had previously been the case, and that, "if it was for the people's interest, it was not far wide of the proprietor's true interest."¹ Indeed, when in 1701 it gave him £2,000, it did so with no intention of alleviating his troubles. It wanted something done, and when it could neither browbeat nor threaten him, it resorted to a pecuniary expedient.²

Considering now more specifically the causes of Penn's financial difficulties, we must assign the principal cause to the conduct of his steward. The confidence Penn had in this person, and the extraordinary influence that he and his wife possessed over their patron's mind, form an interesting

¹ *Col. Rec.*, ii, pp. 195, 196.

² What had the assembly done? The deputy governors, Markham and Lloyd, had been voted a few hundred pounds. But the law passed in 1683, granting the duties on exports and imports to the proprietor, was repealed in 1690, and the sum offered be to raised in its stead, remained unpaid. The salaries of the members of the council were far in arrears. The £2000 had been given to the proprietor to aid him in having the provincial laws confirmed by the crown. But the assembly seconded those who refused to pay any portion of this sum, on the ground that their demands concerning land were not fully satisfied. In fact, the arrears of the £2000 were not collected till after 1716.

episode in the life of the proprietor. Whether this influence was due to Penn's surprising credulity, or to a knowledge that Ford may have possessed of some incidents in the proprietor's life which Penn wished to be kept concealed, is a matter of conjecture. It seems improbable that Penn could repose so much confidence in a man as, without inspection of his accounts, to execute so many mortgages, and to give such extraordinary securities, unless some deeper reason than mere credulity existed. This will more fully appear as we trace the events leading up to the final mortgaging of the province in 1708.

About 1656 Philip Ford was a merchant in London. His business ventures not being prosperous, in 1669 he applied to Penn for assistance. As he was a Quaker and a man of fair business ability, Penn appointed him steward of his estates in Ireland at a salary of £40 per annum. Ford was very faithful, rendering his accounts every six months, and hence Penn trusted him implicitly. When the proprietor was busied in the early affairs of Pennsylvania, he necessarily had to rely on the integrity of the steward. Then the possibility of defrauding the proprietor entered the mind of his crafty servant. Therefore, when Penn was on the point of setting sail for Pennsylvania in August, 1682, Ford presented him with an account, by which it appeared that a balance of £285 1, 7s. 6d. was due for money advanced and expenses of collection. Penn innocently signed this account, and, upon Ford's tendering a document for securing the payment of the sums, without noticing the difference between the two amounts specified, Penn signed this also. The document, however, was a deed of lease and release, bearing date, August 24, 1682. According to its terms Penn, unless within two days he should pay £3,000, was to grant Ford 300,000 acres of land in Pennsylvania at an annual quit-rent of four beaver skins. At the same time the proprietor signed a bond for £6,000 to pay the £3,000 on the date mentioned in the deed.

Ford, seeing that he could so readily impose on the proprietor, concocted another most ingenious piece of villainy.¹ To begin with, he charged Penn two and a half per cent. commission on all receipts and disbursements, as well as on all money advanced. To these gross sums he added the amounts of his commission, together with his salary, and on this calculated compound interest at the rate of 3 per cent. and 4 per cent. payable every six months or oftener. When Penn returned from the province, in 1684, Ford told him that, in spite of the sums of money arising from sales of land in Pennsylvania, and from the rents of the estates in Ireland, he was in debt to the amount of £4293,3s.² Thereupon he presented the proprietor with his accounts, the first item of which was the £2851,7s. 10d. previously mentioned. Penn immediately signed them. Although Ford was apparently satisfied with the security Penn had given in 1682, his wife expressed her disapproval, and constantly urged him to get a larger security for the sum claimed to be due. Hence Ford persuaded the proprietor to go with him to a tavern, and there proposed that Penn should renew his previous security, and make an additional grant. The proprietor at first refused, on the ground that Pennsylvania was a new colony and not a settled estate, and that he was busily engaged in disposing of the land to new comers. Ford stated that such a grant would operate merely as a private security until the money could be raised by the sale of lands in Pennsylvania, and would never be construed to prejudice Penn's rights. He asserted, moreover, that he was willing to receive the money in installments, and, when Penn paid him £500, agreed to lessen the security proportionately. The proprietor, apparently believing that the deeds were simply a collateral security for the sums due to the

¹ *Penn and Lagan Corresp.*, ii, p. 163.

² Up to this time, Ford had received nearly £8000 from the sale of lands in Pennsylvania. Penn MSS., Ford *vs.* Penn.

steward, signed a document dated June 10, 1685, which purported to give Ford 300,000 acres more, the manors of Pennsylvania and Springettsbury, as well as another manor in Chester county, a lot in Philadelphia, certain islands, and all the quit-rents of the province, unless by March 21, 1687, Penn paid him £5000.

On April 11, 1687, Penn signed another account of £5282, 9s. 8d. On the same date he executed a deed by which he mortgaged the province and territories to Ford for 5,000 years at the quit-rent of a peppercorn, unless at the end of a year he paid £6,000. This was also secured by a bond. On October 11, 1689, Penn again ratified the steward's account of £6,333, 19s. 2d. At this time, according to the several deeds and these last accounts, he was indebted to Ford to the sum of £20,333, 19s. 2d. In August of the next year he released to Ford all equity of redemption in the mortgage of April 10, 1687. Ford then, taking advantage of the fact that Penn was under the displeasure of the English government, induced him the month following, in consideration of £6,900 by the accounts supposedly due, to make a conveyance of the entire province and territories without defeasance.

Three years elapsed before Penn even partially realized his position. In 1693 he wrote to Robert Turner a pathetic letter in which, after intimating the danger of imprisonment for debt, he asked a loan from a hundred persons of £100 each, free of interest for five years. Strangely enough, he attributed his financial distress chiefly to the wretched condition of affairs in Ireland. It is evident, therefore, either that he was afraid or ashamed to admit that he had been so defrauded, or that the steward forbade him to speak.¹ His request was met with a

¹ "Almighty God incline and direct you for the best, and determine quickly, for else my course will be in solitudes. My sincere love salutes you, and my wishes in the will of God are for your happiness, whether I see you any more, which depends much upon your compliance with my proposal, and those that close with it shall ever be remembered by me and mine." Hazard, *Reg. of Pa.*, iv, pp. 135-6.

demand for greater security, and whenever he renewed his appeal for aid the same conditions were offered.¹

In 1694 and 1696 he again confirmed the accounts, which now aggregated £10,202, 8s. 7d. In September of the latter year he desired Ford to give him a defeasance of the absolute conveyance of 1690. Ford agreed to consider his request, and prevailed upon him to sign another account of £10,347, 15s. 5d. Then Ford on the pretense that, though the deed of September, 1690, was absolute, still it was intended solely as security for the £6,900, induced the proprietor to sign a general release of all accounts, claims, and demands, as well as of the equity of redemption in the province and territories. However, he agreed to give Penn a defeasance by which, if the proprietor, by March 30, 1697, would pay £10,657, the principal and interest of £10,347, 15s. 5d for six months at 3 per cent., the estate should be reconveyed. Penn assented to the terms, and gave a bond of £20,000 for payment of the money at the time specified. Ford, now, armed with all these deeds and having the proprietor at his mercy could afford to be generous. Hence, in return he gave Penn a copy of all the accounts, and promised verbally that if any material error was found, that it should be made good in spite of the release for all claims.²

It seems that parliament had laid a tax on money at interest. Ford therefore told Penn that the money due for the province would be liable to taxation, and that this could be prevented only by Penn making an absolute conveyance of the province and territories. On his part, in order that the

¹ Fletcher, the royal governor in 1693, said, concerning this request, "Some meetings have been about it, and it is reported that however much they appear his friends, they stagger when he comes near their purses. Those that are able want better security, and those that are not secure themselves saying they would if they could." *N. Y. Col. Doc.*, iv, p. 35. See also *Penn and Logan Corresp.*, ii, pp. 225.

² Penn MSS., *Ford vs. Penn.*

possession of the proprietor might not be disturbed, he promised to lease the premises to Penn for three years at an annual rent of £630, the compound interest of £10,347, 15s. 5d. reckoned every six months at 3 per cent.¹ With some hesitation Penn stipulated in the presence of Ford and his wife that, notwithstanding what might be agreed upon between the parties, the premises should continue only as a mortgage; secondly, that the transaction should be kept concealed and should not hinder the sale of land; thirdly, that Ford would never demand payment except as Penn could secure it from the province; and lastly, that Ford should execute to Penn a deed containing a clause for the redemption of the premises, on the basis of a mortgage, but not by a defeasance. Thereupon, the proprietor, thinking himself safe in the possession of the accounts, and unable to pay the £10,657, executed, April 1, 1697, an indenture of absolute release and a confirmation of all the premises. At the same time he gave to the Fords the royal charter and deeds of enfeoffment. Then Ford on the following day leased to Penn the province and territories on the terms that had just been suggested. Eight days later he entered into an agreement with Penn that, as he was anxious to sell the premises, and in consideration of the difficulty of raising money, as well as of Penn's own desire to purchase the premises, he would sell the province and territories to him for £12,714, 5s., payable at the expiration of three years.² Penn believed that his conveyance of April 1, 1697, made Ford simply a trustee for himself, except so far as any money was actually due to the steward. However this may be, Ford's influence was still paramount. Just before sailing on his last voyage to the province in August 1699, Penn went to take leave of the steward and his wife. After a whispered consultation, these worthies demanded that he

¹ "I then not so much as suspected the baseness and extortion of the account." *Penn and Logan Corresp.*, ii, p. 101.

² Penn MSS., Ford *vs.* Penn; *Penn and Logan Corresp.*, ii, pp. 100-101.

should give up the agreement of September 29, 1696, which had allowed the proprietor the inspection of the accounts, as well as reparation for any injury caused by errors therein. He did not have it with him at the time, and strenuously opposed the demand. Then Ford threatened to stop the proposed voyage, to proclaim that the province was mortgaged to himself, and by *other threats* and assurances called upon the proprietor to sign another written document. Penn begged him to be silent, and on Ford's assurance that it would not hinder an examination of the accounts, signed the document. This stated that, as no errors had been found in the accounts, the proprietor thereby agreed to release Ford from any obligations.

In 1699 the steward by will devised to his wife and certain trustees Pennsylvania and the territories, to be sold for the benefit of his wife and children, unless within six months Penn should pay £11,134, 8s. 3d., together with all debts and arrears of rent. In this case the trustees should reconvey the province and territories to the proprietor. It was provided, however, that this privilege should not extend to Penn's heirs in case of his death, or give him or his heirs any equity of redemption.¹ After his father died Philip Ford went to Pennsylvania and, in May 1701, demanded that Penn should pay the rent, or if he did not, the fact of the mortgage would be immediately published. The proprietor quieted him by a small payment, and he returned to England.² Penn soon followed him, and under pressure from the Fords, agreed to have his lease continued.

In 1702 the proprietor desired to refer the matter to impartial persons, but after three years of negotiation the Fords refused. Thereupon Penn complained to the London Meeting. That body in 1705 appointed some of its members to induce

¹ Penn MSS., Ford *vs.* Penn.

² *Ibid.*; Penn and Logan *Corresp.*, ii, p. 95.

Mrs. Ford to accede to Penn's request, or at least to cease prosecuting him until the matter could be adjusted. The request was again refused. Hence the meeting declared it would hold no further communication with the Fords until they yielded. Penn and his son in November, 1705, were thus forced to proceed against them by a bill in Chancery. This was just what the Fords most desired, for it is very probable that their unwillingness to allow an examination of the accounts was based on the hope that, in the proceedings in Chancery, their injustice would not be considered. In the bill it was stated that Penn, by reason of his confidence in Ford, had to his prejudice signed several specified documents both before and after the steward's decease. For the sake of bringing matters to an accommodation, however, he confined himself particularly to Ford's excessive charges. He admitted he had mortgaged the premises as security to Ford, but asserted that he had reserved the right to sell a certain amount of land. For the quantities thus sold he had received £2,000, and had paid Ford £615. Because the steward did not receive the remainder at once, he had added £1385 to his former accounts and charged the usual 8 per cent. Moreover, Penn was charged with £1,200 put into the stock of the Free Society of Traders, but an inspection of the books of this organization showed that Penn was credited with only £500. He stated further in the bill that he had been charged with the rent of the province for five years, 1697-1702, and that of this sum he had promised to pay £2528, 11s. 2d., on condition that the payment should not prevent an examination of the accounts, or be construed to ratify the conveyance of the province in 1697, or continue to make him a tenant. He pleaded that the document of 1699 was obtained by fraud. He claimed that several sums had been entered in the account as money advanced, but for which he had given no orders. He declared that Ford by the last conveyance was merely a trustee, and that Mrs. Ford, though fully aware of this circumstance, had prevailed on her husband

so to alter his will as to make the deed of release of April 1, 1697, an absolute title. As, however, the proof of its being a mortgage was rather meagre, Penn relied chiefly on the agreement for the sale of the premises back to him, and the fact that the rent reserved was exactly the interest of the sum pretended to be due. He believed the Fords should have 6 per cent. on all money advanced, $\frac{1}{2}$ per cent. commission on receipts and payments, $2\frac{1}{2}$ per cent. commission on all goods to be bought and sold as mentioned in the accounts, and £40 annual salary, as well as interest on the above at the legal rate. The Fords demanded upward of £14,000. Penn was willing to pay £4,300. Hence the plaintiffs asked for relief against the many errors in the accounts, amounting as they believed to over £10,000. Lastly, they desired the privilege of redeeming the premises, and of paying no more for the redemption than should appear to be due by a thorough examination of all the accounts, but without reference to the various mortgages and other documents.

In April, 1706, Penn presented a petition to the chancellor for an injunction to stay the defendant's proceedings in the Exchequer on the account of £20,000. This was granted. The Fords immediately filed a bill against Penn to extinguish his claim of redemption and to have the estate sold according to the will for the benefit of the heirs. This being answered by Penn, the Fords in June entered a plea and demurrer. In this they denied Penn's statements concerning the circumstances under which he had executed the several deeds, and asserted that it was not material what Mrs. Ford said or did under coverture. They offered in evidence all these deeds, as well as Penn's agreements not to examine the accounts. But they made no special claim prior to the date of release in 1697. They declared that Penn had threatened to continue the suit in Chancery indefinitely, so that they should be deprived of their money. They stated finally that, under the circumstances, the plaintiffs should not be allowed the right of redemption,

and that the agreements aforesaid had precluded any examination of the accounts. But if the court should judge the estate redeemable, they desired that the £10,658, with the interest due upon the various accounts, should be paid in full. The case was ably argued by several prominent lawyers. But the chancellor decided that the existence of so many settlements of accounts and of assurances by the various deeds precluded any inspection of the accounts, and intimated that, unless the matter could be peaceably compromised, the sum mentioned with costs would be decreed against the plaintiffs. The Penns introduced another bill in December, but in May, 1707, the chancellor again declared that, however unreasonable the accounts might be, in consideration of the repeated deeds and confirmations he would not set such a precedent as might be established by unravelling the account. Hence the Penns were advised to proceed no further.¹ The Fords, elated at their prospect of success and supported by the proprietor's enemies in England, early in 1706 ordered Isaac Norris, David Lloyd and John Moore, who were supposed to be Penn's greatest enemies in the province, to forbid any payment of rents to the proprietary officers and to receive the rents themselves. A little later in the same year they were entrusted with full powers to dispose of land. Norris refused to serve, but Lloyd and Moore at a meeting of the commissioners of property, produced copies of the deeds, Ford's will and Mrs. Ford's power of attorney. Then Lloyd, who was in constant communication with the Fords, made generally known the orders that had been sent and the proceedings in Chancery, and hence the payment of rents to the proprietor was seriously checked.²

¹ Penn MSS., *Ford vs. Penn*; *Penn and Logan Corresp.*, ii, pp. 109, 163, 174-179, 237.

² "Cherish or threaten tenants as they give occasion for either," wrote Penn to Logan, June 10, 1707, "and get the governor and the best of my friends, who I bless God are the best, to bestir themselves, and browbeat that villainous fellow, David

Norris shortly after sailed for England, only to find upon his arrival that Mrs. Ford and the trustees had commenced a suit in the Common Pleas against Penn for the arrears of rent due since 1697. The proprietor, however, did not appear very apprehensive about it. Norris called his attention to the confusion that would arise if no security was offered for lands sold by him since his deed to Ford in 1697, and hinted at the unpleasant reflections that might result from his persistence in concealing the gravity of the affair, or in remaining reticent toward those who wished to befriend him.¹ To this Penn replied that he was not silent as to the expense of the business, and had always insisted upon the approbation of Ford in all sales of land. Moreover, he expressed great confidence in his right to equity of redemption, and attempted to minimize the danger arising from the mortgage.² Then Norris endeavored to treat with the Fords. He found them insolent and boastful over the advantage the law had given them, and unwilling to make concessions.³ Their arrogance was heightened a few weeks later by a verdict in the Common Pleas for nearly £3000. Thereupon the proprietor was arrested and confined in Fleet prison.⁴

To crown all, in January 1708, the Fords appealed to Queen Anne in the name of the widowed and fatherless. They cited the deed of 1697, the proceedings in Chancery, and the

Lloyd. . . . If I only had supplies, I could bear up till matters came to an issue with the Fords." *Penn and Logan Corresp.*, ii, pp. 228-9, 167, 254, 265.

¹ It is probable that one of the chief reasons of Norris' errand was to ascertain the exact nature of the transactions; for even to Logan, his confidential agent, the proprietor never revealed all the circumstances, and in 1705 wrote, "Philip Ford's business is only a mortgage." *Ibid.*, ii, p. 95.

² *Ibid.*, p. 198.

³ Speaking of Philip Ford, Norris said: "He has no great depth of his own; but his language bore the mark of his mother's character in cunning caution, or the craft of lawyers that have not yet reaped their part of the crop." *Ibid.*, p. 210.

⁴ Penn MSS., *Ford vs. Penn*; *Penn and Logan Corresp.*, ii, pp. 237, 251, 255.

judgment in the Common Pleas. They complained that, whereas the duration of the deed of 1697 was only three years, Penn was now in possession of the province. They declared that they could not obtain satisfaction, as Penn had no estate in England, and was confined for debt in the Fleet prison. In order to prevent the partiality or opposition of proprietary officers, they desired that, by letters patent or otherwise as the queen might see fit, they might be put in possession of both the land and the government of the province and territories.¹ By order in council the petition was referred to the chancellor to examine the allegations of the petitioners, and to report to the queen a statement of the case, together with his opinion as to what was proper to be done. In the hearing before the chancellor, Sir Edward Northey, the attorney for the proprietor, showed that the language of the deeds gave Ford no power of government, and that, as no decree had issued from Chancery, the property was not yet alienated. He declared that the Fords had deceived the queen in stating that they had recovered their rights in the courts, and that, even if this was the case, equity of redemption remained. He did not believe that the queen could grant them possession, for the law should determine property between subject and subject. Hence a suit should be commenced in the courts of Pennsylvania. The chancellor concurred in this view, notwithstanding the objections of the attorney-general, Sir Simon Harcourt, who had been retained by the Fords. He decided, moreover, that the queen had no right to grant the government, "for," said he, "it would not be decent to make government ambulatory, as Penn might speedily pay the sum demanded, or might have his plea of abatement in the accounts granted, in which case the queen might be petitioned to put

¹ The Fords "produced the proclamation made by Charles II., at the time of the grant, that the people should yield obedience to William Penn as an example that the like might be to Governor Philip, or Governess Bridget now." *Penn and Logan Corresp.*, ii, pp. 262-3.

him in the government again." The petition was therefore dismissed.¹

The Fords were now willing to listen to proposals of compromise. Logan had often told the proprietor to state his case to the queen and to offer the government for a compensation to pay off his encumbrances. In 1706 he advised Penn to make over the province to mortgagees who would furnish whatever sums might be needful, and who, with Penn's approbation, should appoint persons to sell lands in Pennsylvania in sufficient quantity to satisfy their claims. When they were satisfied, the province should revert to its original owner. In pursuance of this suggestion, as has been previously noted, Norris entered into negotiations with the Fords; but for fear of injuring their cause in Chancery, they did not wish to accept less than £14,000. Norris saw the necessity of employing some means to remove the malicious intentions of the Fords to expose the proprietor to insult and ridicule. After a conference with Penn, he suggested to Logan that the quit-rents or manors might be taken as security by several wealthy London merchants. Logan replied that measures were slowly being taken to raise subscriptions in the province, but the security expected was similar to that which he himself had proposed the year previous.² Many of the proprietor's friends then warmly expoused his cause. They redoubled their efforts to obtain a compromise with the Fords. They threatened to appeal to the queen or to parliament to have the accounts examined, and the exorbitant demands reduced. But the more conservative favored concession. Some proposed to take the province, and allow the proprietor £500 annually

¹ Penn MSS., *Ford vs. Penn*; *Penn and Logan Corresp.*, ii, p. 263.

² "They have spread reports about the country that he is a prisoner in the Fleet, and are bold with his reputation in all their discourse of him. E. Hartwell, Jos. and Sylvanus Grove, with others whose names I've forgot, have perused the whole accounts from the beginning, and declare they never saw nor heard of the like extortion." *Penn and Logan Corresp.*, ii, p. 238. See also pp. 167, 210, 225.

until the mortgage could be paid off. Penn immediately besought his friends in the province to advance £5,000, so that he "might come and live among them till death."¹

Meanwhile Norris and other friends of the proprietor met Ford and induced him to promise that, if Penn would agree to be bound in good security to pay whatever was awarded, he would consent to leave the matter to referees. But when Penn was busied in finding bondsmen, Mrs. Ford pretended that her son had never made any such agreement, and he immediately corroborated her statement.² Then a man named Meade, a known enemy of Penn, consented to arrange a compromise with the Fords. A conference for this purpose resulted in a note from Philip Ford stating that he could not clear Penn from the encumbrances and establish him in the government, until the grievances of the people were redressed. He insisted that Penn should sign a paper to this effect. But the proprietor refused, lest thereby an admission of many unjust charges should be made. Indeed the Fords hoped that he would give up in despair, remain in the Fleet, and allow them to do as they chose.³ But Penn speedily disappointed their expectations. He endeavored to secure a loan of £7,000 from the lord treasurer. Failing in this, he induced several London merchants to advance him £6,600. Thereupon he made a final offer of £7,600 to the Fords.

¹ *Penn and Logan Corresp.*, ii, pp. 223, 228, 234.

² Her character is still further shown by her offer to sell the province to Norris, and then after Penn had been imprisoned, by her threatening to force Norris to tell all he knew about the proprietor's affairs. Even Norris himself was overreached by this woman, who in spite of the fact that she was bedridden, retained all the cunning and deceit of her younger days. See *Penn and Logan Corresp.*, ii, pp. 237, 257.

³ "Whatever grievances we have or complaints to make," wrote Norris in 1707, "it has always been my opinion they should be asked in a civiler manner, * * * and that without a mixture of falsity and absurdity. But for any to put it to this issue, that he (the proprietor) must confess all wholesale, and promise amendment thereto, and to insist upon it at this juncture and upon this occasion is unfriendly, if not cruel." *Ibid.*, ii, pp. 200, 239, 243, 267-269, 271, 290.

Recognizing the impossibility of gaining actual possession of the province, they agreed to accept it, October 5, 1708, and executed a deed of release.¹ The following day he mortgaged the province to certain trustees both in England and America. They immediately empowered Logan and others to receive Penn's effects, to sell lands and to collect the quit-rents and other debts due the proprietor.

On April 6, 1712, Penn by will granted the government of Pennsylvania in trust to the Earl of Oxford, Earl Mortimer, Earl Powlett and their heirs, with instructions to dispose of it to the crown or to any private person, provided it could be done advantageously. The money arising from such a sale was to be disposed of as later in the will should be directed. All his lands and other possessions in Pennsylvania or elsewhere in America he bequeathed to his wife and other trustees. They were instructed to sell land enough to pay his debts and after payment to convey to his daughter, Laetitia, and to each of the three children of William his son by his first wife, ten thousand acres—these grants to be laid out in proper places selected by the trustees. The remainder of the province should be given to the children by his second wife, John, Thomas, Margaret, Richard and Dennis, in such proportions as his wife should direct.² All his personal estate, together with the arrears of rent in Pennsylvania, was bestowed upon his wife, who was also the sole executrix. By a codicil, he gave her an annuity of £300 out of the accruing rents.³

¹ Penn MSS., *Ford vs. Penn*; *Penn and Logan Corresp.*, ii, p. 306.

² William Penn, Jr., had been given the fragments of the estate in Ireland, together with some land in Pennsylvania. Dennis died in infancy. Franklin, *Works*, vii, p. 273. The failure of Penn thoroughly to examine the country, explains the great difficulties encountered in the attempt properly to apportion the shares. Moreover, the difficulty was increased by the importunate demands of Penn's daughter, Laetitia, and her husband, William Aubrey. *Pa. Arch.*, 2d series vii, *Trustees to Logan and vice versa*, Nov. 30 and Dec. 19, 1711; Penn MSS., *Offic. Corresp.*, i, Logan to Mrs. Penn, Aug. 27, 1719.

³ *Mem. Pa. Hist. Soc.*, i, p. 213.

From this disposition of the government of Pennsylvania by will, three questions arose: 1st. Whether it was valid against the heir at law, William Penn, Jr., or his heirs who claimed by descent; 2nd, whether the object of the trust had not been effected by a contract already entered into by Penn with the queen for the sale of the government; 3rd, whether, in consequence of this last mentioned fact, his interest was not converted into personalty, which by will was conveyed to the widow.

The lawyers disagreed over the question, whether by will the government of the province could be separated from the ownership of the land. One prominent lawyer stated that the devise of the government seemed to complete the contract with the crown; but, since the will was made hurriedly during a severe illness, the disposition of the money arising from the sale was not indicated. Therefore he believed that the earls were trustees only for the heir at law, upon whom the government would have devolved if no will had been executed. The devise of the land, however, was good, unless the land, or some of the quit-rents were inseparably annexed to the government. The attorneys of Mrs. Penn thought the devise of the government to the three lords and their heirs, and that of the land to the widow and the other trustees were both perfectly valid. But the advocate for the heir at law declared that "the government granted by charter to William Penn and his successors, consisted in the privileges and jurisdictions to them also thereby granted; that these privileges and jurisdictions were inseparably annexed to the soil; that as the testator had endeavored to separate it from the dominion of the land, the devise of the government was void; and that the devise of the land was similarly illegal, as the intent was to alien the propriety as a thing distinct from the government, which did not agree with the law affecting such seignories."¹ Hence the

¹ *Mem. Pa. Hist. Soc.*, i, pp. 216-218.

trustees refused to act unless under a decree of Chancery, the interpretation of which was also required by the commissioners of the treasury before paying to the executrix the balance due on the purchase of the province by the crown. But, as stated, this would make the government a part of the personality, thus rendering illegal the conveyance to the earls. The voiding of a portion of the will might serve to vacate the whole and leave the estate to be disposed of by the rules of intestacy. Then on the principle of primogeniture, William Penn, Jr., might claim both the land and the government. As a matter of fact in 1719 he sent to William Keith, who had been appointed governor in 1716, a new commission and instructions, to act in that capacity. But since by the will authority to issue such a document was not granted, and as the commission did not enjoin the performance of the duties required by parliament for the execution of the laws of trade, Keith, after consultation with the assembly, decided not to publish it. Under instructions from the Privy Council, however, he continued to act as governor.¹

But in 1720, when William Penn, Jr., died, his eldest son, Springett, asserted his own right to the government. Hence, in order to establish the will, which, November 4, 1718, a short time after the death of the first proprietor, had been proved in the prerogative court of the Archbishop of Canterbury, on October 23, 1721, Mrs. Penn and her children brought into the court of Exchequer a bill against the trustees of the government, Springett Penn as heir-at-law, and the other legatees. Six years later, July 4, 1727, a decree of the Exchequer declared the will duly proved. Two years prior to this time, however, an agreement was drawn up between Mrs. Penn and Springett, to the effect that Major Patrick Gordon might succeed Keith as governor, provided that by this act Springett's rights of government should not be impaired.

¹ *Col. Rec.*, iii, pP. 63-68; p. L. B., ii, T. P. to Peters, June 7, 1745.

The friends of Keith tried to prevent the execution of this by insisting that, by the will, the sole power to issue commissions was vested in the lords to whom the rights of government were transferred. But Powlett, the surviving devisee, did not oppose the selection of Gordon, and his appointment received the royal approval.¹

In November 1718, shortly after the will of the proprietor had been proved, Mrs. Penn by deed poll conveyed to John, her eldest son, and to Thomas, Richard, and Dennis, as joint tenants, the province and the Lower Counties. Again, January 7, 1726, after the death of her youngest son, Mrs. Penn revoked this deed poll, and, with certain reservations, granted one-half of the province to John, and the other half jointly to Thomas and Richard.² Immediately after the decree of the Exchequer, by a sextipartite deed, the tenure of the younger brothers was changed to tenancy in common.³ Furthermore, in January, 1730, the surviving trustees made a reconveyance of the land to the three brothers, and by other deeds executed in 1735, 1737, 1741 and 1742, the territorial rights of the young proprietors were established.⁴

Now that they were reasonably assured in their possession of the land, the young proprietors were uncertain as to their course with relation to the government. It had been remarked that, if the crown did not choose to purchase the government, the trustees should not continue in their fiduciary capacity. But it would seem that, by the terms of the will, the younger branch of the family could not, except by purchase, receive the powers of government. Here, however, a difficulty arose.

¹ Penn MSS., *Offic. Corresp.*, i, J. Logan to John Penn, Oct. 8, 1725, and Feb. 11, 1726; *Ibid.*, *Supp. Proc.*, Springett to John Penn, July 25, 1725; *Pa. Arch.*, 2d series, vii, p. 130.

² "The Title of William Penn and Descendants to Pennsylvania."

³ *Ibid.*

⁴ *Breviat*, etc., p. 66, *et seq.*

The younger members would have been glad to purchase these powers, but their straitened circumstances appeared to put it out of the question. They also preferred the comforts of life to a title and empty honors.¹ Hence, they agreed that if Springett Penn would offer them a liberal sum they would resign to him all their claims. As a matter of fact in 1730 Springett formed the plan of assuming the governorship as the successor of Gordon, and proposed to grant the government in fee to John, Thomas, and Richard, on condition that he and his brother William might enjoy it for their lives. Failing in this, he offered to sell his interest, but the brothers had not the means with which to pay the price he asked. Negotiations for this purpose however were pending when Springett died. Thereupon, in 1731, William Penn, grandson of the first proprietor, in consideration of £5,500 and of certain specified reservations, agreed to relinquish all claims to the soil and government. A few days later the young proprietors mortgaged the province to him as security for the payment of this sum, but the government was carefully reserved. In the agreement, however, William Penn had directed Powlett, the surviving trustee, to convey the government to the three brothers, but this was not properly done until February 11, 1744.² Of the three brothers, Thomas seemed best fitted for the management of the proprietary interests. Therefore, in 1732, when he visited Pennsylvania, the two brothers who remained behind urged him to sell their lands at almost any price, if by this means they could secure money enough to pay their debts and to relieve themselves from embarrassment.³

¹ John and Thomas were employed in a London dry-goods store, while Richard was for some time without employment. Penn MSS., *Corresp. of the Penn Family*, John Penn to T. P., Feb. 25, 1732.

² MS. Decree of the Chancellor, 1750.

³ Aside from paying the debts left by their father, it must be remembered that the young proprietors had to bear the expense of the litigation with Baltimore. "It is impossible," wrote the brothers in 1734, "for us to live any longer under the

With the object of making Thomas himself the purchaser, they proposed terms on which they would sell to him their interest in the province. The proprietary estate consisted of more than twenty-seven million acres. John and Richard estimated the value of this, exclusive of the bank lots, to be £50,000. They suggested that 100,000 acres should be disposed of by lottery. They offered to sell Conestogoe Manor for £10,000, and expressed a willingness to dispose of the bank lots, and of all the rights and claims they possessed in the Jerseys. If Thomas would advance the necessary sum, he could become sole proprietor. This of course he was unable to do. An offer of £60,000 was then made by outside parties for the whole interest in Pennsylvania, but the bargain was not consummated.¹

Finally, the three brothers entered into an agreement to entail the estate upon the following terms:² Each of the brothers upon his death should devise his share to his eldest son in tail male, with the remainder to the other sons in like manner, and if any should die without male issue his portion was to go to the survivors and their heirs as appointed. John Penn never married, and at his death, in 1746, bequeathed his half of Pennsylvania to Thomas for life, then in succession to the sons of Thomas, or in default of these to the descendants

continuous pressure we now suffer, for we have nothing to live on save what comes from thence, or be continually dunned for our debts." There seems little doubt, however, that the sons of the first proprietor were often reckless and extravagant. In fact, their personal letters give abundant evidence of love for display, if not of their actual prodigality. But this early poverty of some of the greatest landholders the world ever saw, is rather noteworthy.

¹ Penn MSS., *Corresp. of the Penn Family*, John Penn to T. P., Feb. 25, 1732; Sept. 28, 1733; March 4, 1734; T. P. to John and Richard Penn, June 14, 1736. *Ibid.*, P. L. B., i, John and Richard Penn to T. P., May 12, 1734; John Penn to T. P., Feb. 4, 1735. *Ibid.*, *Offic. Corresp.*, ii, John Penn to T. P., April 23, June 1, and June 21, 1735.

² Similar agreements were made in 1750, 1751 and 1774. "Title of William Penn and Descendants to Pennsylvania."

of Richard. Thomas Penn thus became the owner of three-fourths of the province. This fact, coupled with that of his own natural ability, made him the chief proprietor.¹ John Penn, the eldest son of Richard, succeeded to his father's proprietorship in 1771.

II

Bargains with the Governors

Early in the history of the province the assembly had voted that the government should be supported by the inhabitants. The proprietor in the time of his personal administration of the government expected that this would result in the grant of an allowance to himself. At various times he urged upon the assembly the fulfillment of its promise, but did not meet with a flattering response. Small sums were assessed for his benefit, but he never received anything during his absence.² When not present in person, he made private grants to his deputies in the hope thereby to keep the government better under his control. But the amounts thus given were quite small, the intention being that the perquisites of the office should supply all deficiencies. When, however, Penn found himself in pecuniary difficulties, this scheme was soon modified. The assembly had then begun to provide more systematically for the expenses of the government, and the proprietor threw upon it the burden of supporting his deputies. He refused to pay salaries, or to make further grants. Indeed, he went so far as to send orders that no law should be passed, or any privileges granted, until at least £1,000 was annually given for the support of government.³ But in 1704, he promised to allow Gov. Evans £200 per annum till the province gave him a

¹ *Pa. Arch.*, 1st series, i, p. 734; Penn MSS., *Offic. Corresp.*, vii, T. P. to Richard Penn, March 22, 1755; *Ibid.*, *Supp. Proc.*, T. P. to Peters, May 29, 1755.

² *Col. Rec.*, i, p. 597; *Votes*, ii, pp. 419-424.

³ *Penn and Logan Corresp.*, ii, p. 70.

salary. When that took place, Evans was ordered to send to the proprietor all that he received beyond £400, not only from the assembly, but also from the perquisites. As no written contract of this transaction existed, and as the governor expressed his unwillingness to accede to it, the matter was dropped. Penn made a similar stipulation in 1708, but his wishes again failed to be observed.¹

It was surmised, though not generally known, that the young proprietors endeavored to secure a share of the receipts of government.² In Gov. Gordon's commission, 1725, it was stated that he should have all the profits from the government; but the circumstances of the proprietors made an increase of their revenue necessary. Hence they directed Thomas Penn to enjoin Gordon to pay from his receipts £200 which they had agreed to give William Penn. Finding it impossible to execute this project, they suggested that the governor should allow them £500 a year out of his salary. They declared that, as the deputy governor of Virginia accounted to the governor for the profits, and was given a portion in return, they did not think it just that a stranger should receive so large a sum, while they were overburdened with debt. If the governor declined to accede to the proposition, he must be dismissed.³ But the illness and subsequent death of Gordon terminated the negotiation.

For a while thereafter the government remained in charge of the president and council, till some one could be found who would make it advantageous to the Penns to appoint him deputy governor. George Thomas proved to be the man. He was a wealthy planter of Antigua, who also owned considerable property in Pennsylvania itself. While on a brief

¹ *Penn and Logan Corresp.*, ii, pp. 141, 236, 264, 285, 291.

² "Speech of Joseph Galloway," 1764, preface.

³ P. L. B., John Penn to Gordon, May 1 and to T. P. July 20, 1732; John and Richard Penn to T. P., May 12, 1734.

visit to England he heard of the vacancy in the government, and accordingly, in 1736, presented himself to Thomas Penn, who, being pleased with his appearance, sent him to his brother John. The candidate promised to furnish credentials, and to give security for the performance of whatever might be required for the interest of the proprietary family. He wanted the place not so much because of the profits of the governorship, as on account of a liking which he had for the people and country, and a desire to improve and enlarge his own estate. He represented that his independent fortune would raise him above temptations to avarice and corruption, so that the family affairs would not suffer, or the people be subjected to oppression. He urged further that, if any one of the proprietors intended to take the government on himself, the proposal should be kept a secret. If not, he would agree that the terms of appointment should be as advantageous to the Penns as the position would permit, or as could be obtained from any other person.¹ After some hesitation his offer was accepted, and a contract was made for four years, with twelve months' notice to quit. In this it was stipulated that, whereas Thomas was to receive about £2,000 a year in Pennsylvania in salary and perquisites, he would annually pay to the proprietors £500 sterling, provided half of the profits, ordinary and extraordinary, should amount to that sum; or, if not, a half of what did arise. In other words, he had his choice of giving £500 per annum clear, or one-half the perquisites. It was agreed that the compact should remain a secret, as Thomas feared the transaction might be regarded by the public as disreputable.² He assumed the government in 1738, some-

¹ Penn MSS., *Offic. Corresp.*, iii, G. Thomas to John Penn, Oct. 5, 1736.

² Penn MSS., P. L. B., i, John Penn to T. P., Oct. 10, 1736, Feb. 17, 1737; *Offic. Corresp.*, iii, G. Thomas to John Penn, Nov. 9, 1736, Feb. 28, Aug. 2, 1738, Jan. 24, 1739; P. L. B., i, G. Thomas to John Penn, Nov. 4, 1740, and *vice versa*, Nov. 26, 1741.

what to the disappointment of the colonists, as they would have preferred one of the proprietors.¹

In accordance with the contract, Thomas ordered his attorney to pay the half year's salary, though at the time of the payment only a small part of the sum had been received. Instead of the fees and perquisites of the office amounting to £1000 per year, as he had expected, they yielded only £600 in currency. This sum was not sufficient to meet the expenses of living which were required from one in his station. Hence Thomas soon found that he was suffering pecuniary loss. Had he known the actual disposition of the people, he would not have felt obliged to obey the general instructions issued by the proprietors at the time of his commission. And indeed, when the Penns insisted upon a literal performance of the agreement he complained that, though Gordon had violated similar directions, he had not been compelled to pay an annuity. At the same time, because of his refusal to yield to the demands of the assembly, it appropriated nothing for his support, and, had it not been for his independent fortune, Thomas would have been forced to comply with its wishes. His position was made all the more difficult by the fact that the people regarded it as a dire calamity, that they should have a governor whose means raised him above the necessity of submitting to their will. He had hoped for a peaceful administration, but instead he was involved for several years in contentions with the assembly, especially about the granting of supplies to the king and the issue of paper money.² He speedily saw his miscalculation, and when the assembly continued to withhold his support, repented of his bargain with the proprietors. He

¹ Penn MSS., *Offic. Corresp.*, iii, J. Langhorne and J. Logan to John Penn, May 20, 1737.

² The house voted £3000 for the king's use, and at the same time petitioned for the removal of Thomas. As for some time the crown had not demanded a grant, this appeared like a bribe to secure his removal. Penn MSS., *Offic. Corresp.*, iii, R. Peters to T. P., Oct. 24, 1741; G. Thomas to John Penn, Oct. 27, 1741.

even claimed that at times, when the payments from his private estates were not forthcoming, he suffered for the want of food and drink.¹ But of this fact the house was not aware, while Thomas would not give it the opportunity to say that he yielded to its desires in order to suit his own interests.

When he proposed to resign the governorship, the Penns reminded him of his obligation. At length, however, he pleaded so earnestly for a release from the money article of the agreement, and had so faithfully served the proprietary interest, that Thomas Penn expressed his willingness to grant the request. He felt that, though several lords were desirous of obtaining the position for their friends, the retention of Gov. Thomas would be for the advantage of the proprietors. Therefore it was suggested that, as the assembly was so remiss in its payments, and as probably the whole amount, both of salary and perquisites, would not exceed £1,200 or £1,500 per annum in currency, it would be advisable to let the governor have £1,200 thereof, and that he should account to the proprietors for the balance.² But this suggestion was not adopted. The agreement remained in its original form, and the governor retained his office. After a time harmony between him and the assembly was restored. Then it voted him all his arrears, and he in turn paid all that was due to the proprietors.³ But when in 1746 he resigned his position, he endeavored not only to have his bond canceled, but to secure the return of a large part of the money which he had paid to the Penns. His claim was, that he had a right to all sums which had been granted him by the assembly, especially as he had advanced money from his own pocket to aid the king's troops. Upon

¹ Penn MSS., *Offic. Corresp.*, iii, G. Thomas to John Penn, Mar. 1, 1740.

² Penn MSS., *Corresp. of the Penn Family*, T. P. to John Penn, Nov. 11, 1740; P. L. B., i, John and Richard Penn to T. P., Nov. 26, 1740; John Penn to G. Thomas, Mar. 7 and Nov. 26, 1741.

³ Penn MSS., *Offic. Corresp.*, iii, G. Thomas to John Penn, Nov. 5, 1745, to T. P., Apr. 26, 1746.

the failure of this proposal, he tried to obtain the governorship for his son ; but the proprietors were no longer in need of such bargains. In fact, rather than compel the deputy governors to give up a portion of their salary, it was their purpose, when their circumstances would allow it, to render them financially independent, unless the assembly chose to make a settled allowance.¹ But this was never done.

The proprietors made no further attempts to procure a share of the salary or perquisites of the gubernatorial office.²

¹ Penn MSS., *Offic. Corresp.*, iii, G. Thomas to T. P., May 11 and June 12, 1748; and *vice versa* June 30, 1748; *Ibid.*, *Supp. Proc.*, T. P. to Peters, Feb. 20, 1748, May 29, 1755.

² Despite all the above evidence, Thomas Penn in a letter to Richard Peters (Penn. MSS., *Supp. Proc.*, May 29, 1755), unqualifiedly denied that he had ever entered into any agreement which he might be ashamed to own before all the world, or with a governor for receiving part of his salary !

CHAPTER III

CHARACTER AND POLICY OF THE YOUNG PROPRIETORS

IT has been generally supposed that the sole aim of the sons of William Penn was to make money, regardless of whatever the effect of this course might be on the condition of the people. For this reason they have been subjected to a great deal of sharp criticism. But an examination of their circumstances will, in some measure, serve to show that such criticism is based largely on blind partisanship. We have seen that the attempt of William Penn to realize his humanitarian schemes proved a dismal failure, financially and otherwise. The result was, that he left as a heritage to his sons only a contested estate, a heavy burden of debt, and the remembrance of their father's good name. They would not have been human if they had excluded all ideas of private enrichment, while the absurdity of yielding at once to the importunities of the assembly was evident. Their position was unfortunate, and in a variety of ways they were exposed to misrepresentation. Any acts of theirs, however generous might be the motive, were likely to be viewed with suspicion, lest their object might be in some way to secure personal advantage. They must either submit to the popular will, or wage continual war, and thereby expose themselves to unnumbered accusations. To serve the public, and at the same time promote personal interests, without sacrificing dignity and governmental power, was proved in the case of the proprietors to be an impossibility. To govern in harmony with the assembly, meant complete subjection to its control.

Why did not the young proprietors adopt the early policy

of their father? In reply it may be said that any attempt on their part to revive paternalism would have met with violent opposition, while at first their poverty made the cherishing of such a plan, even for a moment, an impossibility. But there was another and deeper reason for the attitude they assumed. The young proprietors knew the criticisms to which their father had been subjected. They knew how vainly he had appealed for help to his alleged friends in the province. They knew how, instead of the love and gratitude which should have been the reward of his efforts, complaint and misrepresentation had been his portion. Are we to wonder, then, why the sons of William Penn did not overflow with kindly feelings toward the people of the province? Our real cause for surprise should be, that, in their voluminous correspondence with their officers in the province so few harsh and unkindly expressions appear. Even in these instances the outbreaks were due to some taunt or sarcastic "remonstrance" from the assembly. That body was very fond of recalling the virtues of William Penn, now that he was dead, and by comparison reminding his sons of their own supposed defects.

Perhaps it is not surprising that in the popular mind prejudices existed against the proprietors. They were Englishmen, presumably very wealthy, fond of pleasure, conscious of their distinguished position, and therefore apparently antagonistic both to popular institutions and to individual liberty. It must be admitted that to some extent this was true. But, as the people never seemed inclined to coöperate heartily with the proprietors, but kept up the fire of criticism to which allusion has been made, it should not be a cause for wonder that the Penns were slow to make advances.

Before proceeding to show from their correspondence that the proprietors were by no means so selfish as they are commonly represented to be, it may be well to state that, on several occasions they displayed a commendable public spirit. They contributed to the support of the University of Pennsyl-

vania.¹ They sent cannon for the defence of Philadelphia.² They were benefactors of the Pennsylvania Hospital.³ They on several occasions opposed the passage of acts of parliament which were prejudicial to the welfare of the colonies in

¹ Penn MSS., *Philadelphia Land Grants*. When the project of establishing a university was first broached, the proprietors were in doubt as to the advisability of it. "Your proposal for the education of youth," wrote Thomas Penn to Gov. Hamilton, Feb. 12, 1750 (P. L. B., ii) "is much more extensive than I ever designed, and I think more so than the circumstances of the province require. The best of our people must be men of business, which I do not think very great public schools or universities render youth fit for, and the additional exercises are not fit accomplishments for many. I do not think it will be any real advantage to Pennsylvania to establish such an academy, as the large allowance made to young gentlemen at all places of learning gives them the lead in every excess. I find people here think we go too fast with regard to the matter, and it gives an opportunity to those fools who are always telling their fears that the colonies will set up for themselves." But four years later, in a letter to Mr. Peters (Penn MSS.), he said, "I find the people of New York have resolved to establish their college (Columbia), and have persuaded Dr. Johnson to accept of the presidency of it, and expect to make it greatly serviceable to all the provinces, as they look on your academy only as a school to fit them for that college. But I hope, when Mr. Smith (later Provost of the University of Pennsylvania) arrives, it will not be necessary to send any pupils from Philadelphia."

² "I send these pieces of cannon personally, for I do not wish it drawn into precedent that we are to furnish cannon for all forts." P. L. B., iii, T. P. to Hamilton, Aug. 27, 1750.

³ "Though the application to us for ground to build a general hospital, after the scheme was settled without consulting us, or making us the compliment of asking whether we would choose any part in the direction of it, which from our station we had reason to expect, and if so large a benefaction was intended to be asked of us more especially, yet the regard we do and ought to bear to our country, and the attention we have to every proposal for its real service, inclines us to overlook what is disagreeable to ourselves, and to grant land for the purpose in a place where there is considerable vacancy, which may be given in time, if our successors shall judge it necessary. The land will be granted with the power of incorporation into a body different from that you have formed by act of assembly. The grant will not pass till this act is repealed, for we or the governor should have some power of superintendence." *Ibid.*, T. P. to Hamilton, Dec. 19, 1751; to John Penn, Dec. 7, 1764. "We hope it may be in our power to assist every institution that tends to the service of the province." *Ibid.*, ix, T. P. to W. Smith, March 8, 1770.

general.¹ They were careful to discourage undue favorit-

¹ "The clause in the bill for taking the duty off pig and bar iron, to prohibit erecting any slitting mills and steel furnaces in America, is a precedent of most dangerous consequence to prevent our making what we want for our own use, therefore I shall use every means in my power to have it left out of the bill. I spoke of it as an attack on the rights of the king's subjects in America." *Ibid.*, T. P. to Hamilton, Feb. 12 and May 16, 1750.

"I shall endeavor to prevent a repeal of the act for laying duties on negroes. I think it not for the security of the province to encourage their importation, and that to encourage any particular trade which will be prejudicial to it is not justifiable, and I think it highly reasonable that the province should judge whether it thinks it for its service to import them." *Ibid.*, vii, June 13, 1761.

"People here do not like our falling into manufactures in the plantations, and have strange, narrow notions of such things." *Ibid.*, T. P. to Barton, Feb. 11, 1762.

"We have endeavored to get the stamp tax postponed, as it is an internal tax, and wait till some sort of consent to it shall be given by the several assemblies, to prevent a tax of that nature from being laid without the consent of the colonies. We hope the consent may be a *salvo jure* for such a claim of right by the colonies, unless they can propose a fairer tax." *Ibid.*, viii, T. P. to Hamilton, March 9, 1764.

"We have been much employed in endeavoring to prevent a stamp duty from being laid on the colonies. As we failed to do this, we have endeavored to have the stamps made as small as possible." *Ibid.*, to John Penn, Feb. 8, 1765.

"People here generally think the assemblies claim too great privileges, and that they are little more than the common council of a borough. Indeed, I cannot conceive how ours could claim an exemption from taxes here, when there is a plain estimation of it in the charter. Mr. Hughes, however, has been appointed to sell stamps in Pennsylvania. I did not apply to have any person appointed, lest I should be thought a favorer of the bill." *Ibid.*, to W. Allen, Feb. 15, 1765; to John Penn, April 13, 1765.

But when the stamp act was repealed, the proprietors thought the people in the province had by their demonstrations of joy "shown their love of freedom in an improper manner." At the same time they cautioned the governor to be careful in his behavior in the matter. *Ibid.*, to John Penn, Jan. 11 and March 18, 1766. Furthermore, Thomas Penn wrote to Rev. William Smith, April 1, 1766 (*Ibid.*), "As the new administration and a majority in both houses of parliament have showed so much tenderness to us in the repeal of the stamp act, and are now engaged in altering all the late laws which have been so injurious to our trade, I am desired to tell my friends that they hope and expect this will be received with all gratitude and thankfulness, and that great care will be taken to prevent any behavior that may indicate a sense of victory over the legislature of their country. If they do this, they will gratify their enemies, and make it impos-

ism.¹ Their public spirit also is well illustrated by the following extracts from their correspondence.

In a letter to Peter Colinson, August 1, 1737,² Thomas Penn wrote, "I have regarded the public welfare equally at least with my own and the family's, and never thought of advancing my interest at the expense of the public. The quit-rents must be increased to such a sum as may handsomely support those who shall hereafter be in the station in which we are placed; for my father's rate of one shilling per hundred or thousand acres would not find a gentleman shoes and stockings. I want to have every debt due from my family paid. To this end I shall ever think myself obliged to serve the public both with my person and pocket; but I never desire to have views so noble, extensive, and benevolent as my father, unless he had left a much larger fortune; because these views, though good in themselves, yet by possessing him too much, led him into inconveniences which I hope to avoid." Again in a letter to Richard Peters, October 16, 1747, Thomas Penn wrote, "I shall ever wish to do these poor people all the good I can, and as my father recommended the care of them to James Logan, I must to you. At the same time, I assure you that whenever I return to America, I shall be more than ever attentive to them and their affairs."³ To the same person on July 17, 1752, he wrote, "We have nothing in view but what is for the real interest of the country. It is that alone which

sible for their friends to serve them. This I have engaged they will not do, but make very early acknowledgments for the favor done them."

¹ Penn MSS., P. L. B., viii, T. P.; to W. Allen, July 13, 1765; ix, to Peters, Oct. 7, 1766: "No man can be more sensible than I am of your caution in interfering in public business on account of your alliance with our family, but you must not wonder that people should suspect that has often an influence in appointments, even without any reason. It cannot be expected to be otherwise, and therefore cannot be prevented." To W. Allen, June 9, 1768.

² Penn MSS., *Corresp of the Penn Family*

³ P. L. B., ii.

inclines us to increase the influence of the executive part of government, by no means to gratify a thirst for power, and I would not have so much that, should it come into bad hands, it may be made use of to the prejudice of the people."¹ A few years later, when the questions relative to the raising of supplies for the king's service were being agitated, while the governor and the assembly denounced each other as disloyal to the king, and as wanting in public spirit, the proprietors expressed a strong desire for peace and concord. They declared that they felt a real affection for the colonists, and did not wish to secure for themselves personal advantages at the public expense. They said further, that they would not suffer themselves to be so far provoked by any treatment which they might receive from the assembly, as to wish to rob that body of any part of the liberty it had a just right to expect, or that would conduce to the advantage of the people.² "It is disagreeable," wrote Thomas Penn to Gov. Morris,³ "to find a people for whom my family wish to do everything in their power to make them considerable, taking every step they can to injure us." "I am sure I have no desire to have any authority inconsistent with the well established liberty of the people."⁴ "You may be assured that I wish to devote my time to the service of Pennsylvania. I hope to live long enough to convince many that are now of opposite sentiments, that I have nothing more at heart than her real service, though I may think it necessary to attain it by methods different from what they propose."⁵ "We do not wish to abridge any part of the constitution granted by our father, but we would preserve it to after ages."⁶

¹ P. L. B., iii.

² *Votes*, iv, p. 95; Penn MSS., *Supp. Proc.*, T. P. to Peters, July 8, 1752.

³ *Pa. Arch.*, 1st series, ii, p. 253.

⁴ P. L. B., iv, T. P. to Peters, Feb. 21, 1755.

⁵ *Ibid.*, T. P. to W. Logan, May 6, 1756.

⁶ *Ibid.*, viii, T. P. to W. Smith, Dec. 7, 1764.

Lastly, a short time after the assembly had petitioned the king to remove the proprietors from control of the government, Thomas Penn wrote to one of his officers, November 7, 1766,¹ "I must say that you judge rightly that we would do everything in our power to be upon good terms with the people of Pennsylvania, consistent with the preservation of our just rights, which we ought to preserve for the benefit of our family, and in some sort for the benefit of the people, who, if we were to give up some of our power to their representatives, more than they have, would not reap any real security to their liberties from it. We are very well pleased to receive your information of any affair in which the people have a just cause of complaint, and shall impartially, as much as possible for us, consider the case in order to their redress, in which we will act according to the principles of equity and honor."

Considering now the religious view of the proprietors, it may be said that John Penn, although not a regular attendant at Quaker meetings, and although not a strict observer of their customs, never joined the Church of England. Richard in early life became a communicant of that church. But Thomas did not become an Episcopalian till about 1758.² The fact that the proprietors had ostensibly forsaken Quakerism, caused the Friends to be bitter against them, and to treat them slightly.³ At first the proprietors cherished a like spirit in return,⁴ but gradually their resentment cooled, and, though occasionally angered by some demonstration on the part of the Quak-

¹ P. L. B., ix, T. P. to Tilghman.

² Deposition by Thomas Penn before the Lord Mayor of London, March 3, 1758; Penn. MSS., *Supp. Proc.*, P. L. B., v, T. P. to Peters, March 23, 1758. As early as 1743, the proprietor wrote to Gov. Thomas (P. L. B., ii), "I felt obliged to solicit the ministry against the Quakers, or at least I stated that I did not hold their opinions concerning defence. I no longer continue the little distinction of dress."

³ Penn MSS., *Offic. Corresp.*, vi, R. Peters to T. P., Feb. 3, 1753.

⁴ "I wish the Friends well, but I think many of them pert, forward coxcombs who should not be allowed to engage in services for which they are not fit." *Ibid.*, iii, T. P. to F. J. Paris, March 27, 1741.

ers, they in general bore themselves in a kindly and peaceable manner toward that sect. This may be seen in the following extract from a letter written by Thomas Penn to William Logan, son of James Logan, and, like his father, a Quaker. "Though I think I have not been treated by many of the Quakers in a manner that should engage me to take the most particular care of their interests, yet I never had the least desire to injure them, or to abridge them of that liberty of conscience they had a right to by their charter. No treatment of me can ever persuade me to act so bad a part, and I think they and every other denomination of Christians have a right to worship God in their own way. I am so far from being their enemy, that I shall ever be ready to show the society on all fitting occasions that I have a regard for them. If they pretend a power over those of other persuasions, I cannot be their friend in any such affair. Every particular denomination of the Christian religion is perfectly upon a level in Pennsylvania.¹ You may be certain I have not the least intent to injure that society, or to treat it on any occasion with the least disrespect. I wish to have preserved to it all the liberty and indulgence my father could entitle it to, and only in return wish to see the members of it act with that caution, prudence, and simplicity that justly entitled so many of its former possessors to the esteem and regard of those they lived among. They were not lovers of strife and contention, but common peacemakers."² Again in 1767, Thomas Penn said,³ "I can truly assure them, though

¹ "I wish to see all places of religious worship on an equality in Pennsylvania, and I am of opinion it may be attended with ill consequences to grant any charter to a religious society." P. L. B., ii, T. P. to Peters, Oct. 9, 1749. "By the settlement of Pennsylvania, all professions of the Christian religion are to be on the same footing. This is what we wish to continue, and must leave it to the governor to choose such as he thinks are most fit for magistrates, without giving such preference to those of any profession as may be injurious to the rest." *Ibid.*, viii, Aug. 10, 1764.

² P. L. B., v, T. P. to Logan, June 21, 1757.

³ *Ibid.*, ix, T. P. to W. Allen, July 31, 1767.

we do not profess ourselves of their society, we are very firmly disposed to show a great regard for them on all occasions, not inconsistent with the safety of others, and shall ever wish to consult their real interest."

Passing now to a subject immediately connected with their religious opinions, the question might be raised, why did not the sons of William Penn, upon their succession to the proprietorship, assume personal direction of the government? Not only were they urgently requested to do so by numerous friends in Pennsylvania, but by taking immediate control they would probably have improved their private estate. Moreover, some doubt had arisen as to the person on whom the government should devolve in case Gov. Gordon died, or was removed from office. Hence Thomas Penn, when contemplating his visit to the province in 1732, had some thought of assuming the governorship. But the exemplary conduct of Gordon, and the confusion of property relations seemed to render such a step unwise.

When the subject was first seriously broached, Thomas Penn asked the opinion of Mr. Paris, the family lawyer, respecting its feasibility. His opinion was that it would be necessary for the other brothers to convey the entire estate and government to Thomas, before he could properly assume the governorship, otherwise an act of parliament would be needful. Also the statute of 7 and 8 William III., Chap. 22, had provided that all governors and commanders-in-chief, no matter by whom they were appointed, must take an oath to observe the navigation acts and must also procure the royal approbation. Neglect of duty, or neglect to take the oath, entailed dismissal from office and a fine of £1,000. Therefore, if John and Richard Penn did grant Thomas the powers of government, he would have to take the oath and procure the approval of the king.¹ Indeed all three brothers believed that,

¹ Penn MSS., *Corresp. of the Penn Family*, F. J. Paris to T. P., Jan. 29, 1732; John Penn to T. P., January and May, 1732.

whether acting as deputies or as governors-in-chief, they were liable to take the oath. It was thereupon suggested that, if any of them should happen to be in Pennsylvania at the time of Gov. Gordon's death, he might assume the administration until a deputy governor should be appointed. But this might be viewed as an effort to evade the statute. Hence, as an expedient, John Penn proposed that Richard should become governor. Richard, however, declined to accept the office on the plea of lack of ability to discharge its duties.

At length Thomas decided to take it. Then John and Richard ordered Mr. Paris to prepare an instrument for this purpose. The attorney warned them that such a proceeding might not be safe without the proper confirmation and qualification. A violation of the statute might serve as an excuse to the crown for the forfeiture of the royal charter. In fact the assembly might refuse to act under him. At this juncture Thomas Penn, who was then in the province, frankly offered to give way to his elder brother, and to allow him to qualify as governor, if it was thought that, by his returning to England the interests of the family there would be better promoted. But the eldest proprietor refused. Then John and Richard suggested that Thomas should qualify himself by oath before the council of Pennsylvania, as Gov. Markham in 1698 had done, and, on the strength of that, obtain the royal approbation.¹ To this Thomas would not agree,² but, even had he done so, it was at best a questionable plan, and its consummation was likely to be opposed before the Board of Trade by the influence of Lord Baltimore. At any rate, a commission to Thomas as governor was made out. John Penn signed it and petitioned the king for his approval. No sooner had this become known than a number of the friends of the family expressed deep concern at the prospect of Thomas Penn taking an oath. As the act seemed to imply the abandonment of his

¹ P. L. B., i, John and Richard Penn to T. P., Aug. 10, 1736.

² *Ibid.*, John Penn to T. P., June 6, 1737.

own religion and that of his father for mere temporal advantage, it threatened to arouse the opposition of the entire Quaker sect. There was a chance even that it might lead to their publicly disowning him. This caused John Penn to hesitate, and eventually to withdraw the petition. At the same time, Thomas requested that for the present the idea be abandoned. Then came the proposition of George Thomas. John Penn of course was careful to conceal the agreement made with this prospective governor, and gave the friends of the family to understand that Thomas Penn had declined the governorship on account of the difficulty about qualifying.¹ This was in fact the chief obstacle, but the opposition of Baltimore to the control of the proprietors over the Lower Counties and the secret bargain with George Thomas certainly had their weight.

At various times thereafter,² when the requests of his friends became more earnest, and when in 1755 the opposition to Gov. Morris³ was at its height, Thomas Penn thought of per-

¹ The attorney general later stated his opinion that a Quaker governor might qualify by affirmation, instead of by taking an oath. Penn MSS., *Corresp. of the Penn Family*. T. P. to John Penn, Sept. 10, 1736; to R. Partridge, Aug. 1, 1737; *Private Corresp.*, ii, T. Hyam, and W. Vigor to John Penn, Oct. 5 and Dec. 18, 1736; P. L. B., i, John Penn to T. P., Feb. 4, 1735, Oct. 10, 1736, Feb. 17, May 25, and June 6, 1737.

² In 1747 Thomas Penn wrote to the president and council (P. L. B., ii), "An appointment for governor will be made soon, unless one of ourselves should be able to leave England, but our controversy with Baltimore detains us." Gov. Hamilton was soon after appointed. When in 1752 that officer contemplated a release from his duties, the proprietor said (*Ibid.*, iii), "Next year I propose to go to Pennsylvania, and take the government upon myself." But on account of the proceedings against Baltimore he was forced to give up the plan. *Ibid.*, T. P. to Peters, June 10, 1754.

³ "The situation with the French and other public affairs demand your presence. Some call Morris a tyrant, others say you might as well have sent the devil, and have in this regard shown your great regard for the province. The moderates say it is the most unfortunate thing that has happened to Pennsylvania, and that he will sit in hot water if he shows his Jersey airs and continues to be a stickler for prerogative." Penn MSS., *Corresp. of the Penn Family*, R. Hockley to T. P., Aug. 4, 1754.

sonally assuming the governorship, but the decisive step was never taken.¹ About the same time also, John, the eldest son of Richard Penn, manifested a wish for the executive office, but owing to his youth, inexperience and reckless conduct, it was not gratified² till 1763. John was succeeded in 1771 by his brother Richard, but became governor again in 1773 and continued in office till the Revolution.

It now remains for us to consider the proprietors from the standpoint of their relations with the English government. They were entrusted with many of the prerogatives of the crown, and the proper exercise of them necessitated great care in preserving them from the inroads of the rapidly-growing democratic spirit in Pennsylvania. We have already noticed that the people in the province looked upon the proprietors as aristocrats. Particularly was this true when, toward the middle of the eighteenth century, the revenue of the proprietors from their estates made their position more independent. That they should develop aristocratic tendencies is not remarkable. They had a lineage of which to be proud. They were the proprietors of one of the largest of the provinces. Their association with the aristocracy caused them to maintain a corresponding social station. Democracy, as the term was understood in America, had very little foothold in England. Indeed, the British government was aristocratic, and would scarcely tolerate interference on the part of the proprietors to champion popular rights.³ Hence, if the proprietors were democratic in

¹ Penn MSS., *Supp. Proc.*, T. P. to Peters, Oct. 25, 1755; *Offic. Corresp.*, vii, R. Hockley to T. P., Nov. 28, 1755.

² *Ibid.*, *Corresp. of the Penn Family*, R. Hockley to the proprietors, Oct. 7, 1754; *Supp. Proc.*, T. P. to John Penn, June 4, 1755.

³ In 1730 the proprietors refused, unless paid for the service, to solicit the crown's approval of the acts of assembly. Inasmuch as they did not attempt to exercise a parental supervision similar to that of their father, they believed that, when the acts had been presented at the proper office in England, their duty ceased. For this and other reasons the assembly soon after appointed an agent. P. L. B., i, John Penn to Gov. Gordon, May 3, 1730. Their attitude at this time was probably due

their sympathies, they were liable, under cover of some specious pretence, to being deprived of their powers of government. If they were aristocratic in their predilections, they would sharply antagonize the progress of the democratic spirit in Pennsylvania. It was only natural that their birth, education and position should incline them toward the aristocratic side.¹ Standing as they did in the place of the crown, the proprietors, therefore, did not approve of appeals to the public, even though in their behalf. They thought that such a practice sprang from a principle injurious to the true spirit of government, and tended to confusion. They were thus not inclined to depend upon mere popular ratification of their measures.² When they failed, moreover, to induce the assembly to accept money bills on their terms, they declared that its proceedings were such as to justify the assertion, that grants of supply for the king's use were not cheerfully made, and that professions to the contrary were undoubtedly false. But by clever management the proprietors succeeded in persuading the Board of Trade that they had made the assembly perform at least a part of its duty.³

to financial embarrassments, for seventeen years later they expressed a willingness to assist the colonists in securing the royal approval of the acts. But their fear that the home government would resent such an interference, prompted them to be careful in the matter. On March 9, 1747 (*Ibid.*, ii), Thomas Penn wrote to the speaker of the assembly, "We shall ever be glad to render any assistance in defence of your laws, but we prefer the assembly agent would act, as applications in defence of privileges are much better received from a body of people, than from a proprietor whose powers are thought too great by the officers of the crown. We found the Board of Trade look on us a little coldly."

¹ "Mr. Franklin's doctrine that obedience to governors is no more due them than protection to the people, is not fit to be in the heads of the unthinking multitude. He is a dangerous man, and I should be glad if he inhabited any other country, as I believe him of a very uneasy spirit. However, as he is a sort of tribune of the people, he must be treated with regard." *Ibid.*, T. P. to Peters, June 9, 1748.

² Penn MSS., *Supp. Proc.*, T. P. to Peters, Oct. 25, 1755; *Offic. Corresp.*, vii, R. Hockley to T. P., Nov. 28, 1755.

³ *Pa. Arch.*, 1st Series, ii, pp. 367-8.

Of the reputation gained by this service they stood in special need, as a means of strengthening their position with the home government. But when choosing a successor to Gov. Morris in 1755, Thomas Penn said that hereafter he intended to rely on his own resources, and did not wish to have the deputy governor too subservient to the English government.¹ In fact he believed it proper for the governor to obey proprietary instructions in ordinary affairs, and only in extraordinary cases the directions from the ministers.²

After the proprietors had succeeded in obtaining the repeal or modification by the Board of Trade of a number of acts passed by the assembly in 1759,³ they fully intended, in order to keep the executive and legislative departments distinct, to allow the assembly to appoint only those officers whom by charter it was permitted to select.⁴ But the opposition was too

¹ "Putting in the words 'governor by the king's royal approbation,' in an act is unnecessary, as that doesn't give him any power, is not generally used, and had better be omitted." P. L. B., ii, T. P. to J. Kinsey, March 30, 1748. "Your expression 'by the king's paternal authority' is a little too royal." *Ibid.*, viii, to Gov. John Penn, March 9, 1764.

² Penn MSS., *Supp. Proc.*, T. P. to Peters, Sept. 27, 1755.

³ "Do not exult over the repeal of the laws, as we wish to use it to restore a good understanding among the people. We have no intention to seize any powers but what the government at home avow we have a just right as representatives of the king, and as necessary for the good order and government of the people under our care." P. L. B., vii, T. P. to Barton, March 12, 1761; to Hockley, April 13, 1761.

⁴ "The executive part of government is too weak already, and, as often as an assembly meets, they will desire to throw something into the popular scale." P. L. B., ii, T. P. to Hamilton, July 31, 1749. "It is a matter of concern to me that party rage should have so far blinded the bulk of the people, that they should not see their security consists in preserving a proper balance of power between the two branches of the legislature, that they may be a check on each other, so that the one may always be able to defeat any schemes the other may form to the injury of the people." *Ibid.*, v, to Benj. Chew, Dec. 12, 1757. "I would sooner resign a government into the hands of the crown, by whose ministers I have been offered a very full consideration, and had it many times mentioned to me, than suffer the lawful and necessary power of the crown, committed to the care of my family, to be any further usurped by the assembly." *Ibid.*, to W. Logan, June 21, 1757.

strong for them to make headway against it. They took some meagre satisfaction, however, in the opinion of the Board that dispatches should be sent to them as governors-in-chief. This statement they ordered to be published broadcast in Pennsylvania, as it was hoped it would have weight with the people, who were accustomed to regard the Penns not as governors, but only as landlords.¹

¹ "We will have ourselves mentioned as occasion may offer, and not suffer our governors to speak as if we did not govern the province, as the assembly are pleased to say." *Ibid.*, iv, to Peters, May 8, 1756. "I know of no Thomas Penns, and Richard Penns, nor shall I ever on any consideration of saving trouble or expense to myself, yield to their leveling principles." *Ibid.*, to Hamilton, Sept. 7, 1756. Also, Penn MSS., *Supp. Proc.*, to Peters, Jan. 12, 1760, v. v. May 9, 1761.

CHAPTER IV

THE FRAMES OF GOVERNMENT

THE royal charter was the basis of the provincial constitution. In outlining the powers given by this instrument to William Penn, we have noticed that he was authorized to call upon the freemen to assist him in the work of government. In conjunction with them and by virtue of the power bestowed upon him by the crown, he issued in 1682 and 1683 certain frames of government, and in 1701 a charter of privileges. These were grants in the form of constitutions issued by the proprietor and accepted by the freemen. The act of settlement of 1696, popularly known as Gov. Markham's frame of government, was a statute enacted by the deputy governor and the assembly, and was designed to be supplementary to the frame of 1683. It is proposed in this chapter to trace the origin of the first frame of government, and the transition from that to the frames subsequently issued. At the same time we shall see how Penn in his personal relations with the colonists gradually lost the kindly and fatherly influence he had hoped to possess over them.

In endeavoring to ascertain the origin of the first frame of government, it was found necessary to have recourse to a volume of the Penn MSS. entitled, "Charters and Frames of Government." In this volume are preserved a number of documents which show the attempts of Penn and of his friends or associates in the project of colonization to form a system of government which, while embodying all that was valuable in the old systems of the world, should also contain several novel provisions. Here are to be found rough drafts not only of

frames of government, but also of the "Laws agreed upon in England." The fact that many of the sentences are crossed out and rewritten, sometimes in the same, sometimes in a different handwriting, and that, with one exception, no dates or names are attached by which a clue to the authors might be secured, makes it almost impossible to arrange these embryonic schemes of government in anything like a logical order. But a careful study of the contents of this manuscript volume would indicate that the origin of the suggestions, and the order in which they were made, were as follows. Some features of the plans proposed seem to have been derived from Harrington's *Oceana*.

At the outset the declaration of the proprietor to Robert Turner,¹ "that he had long desired to observe and reprove mischiefs in government, and that for matters of liberty and privilege he proposed that which was extraordinary, and to leave himself and successors no power of doing mischief, that the will of one man may not hinder the good of a whole country," was taken advantage of in a very literal sense. For the first draft of a constitution for the province declared that the government should consist of a senate composed of two houses, in the upper of which the proprietor might have two votes, and "no other power in the government, or over the state." The membership of the upper house should be limited to the first fifty persons and their heirs, who had purchased from Penn a share or propriety of 5,000 acres. But whenever the number of acres held by one of these purchasers should be reduced to less than 2,000, his "baronage should cease." In this case the remaining members might make provision to fill the vacancy. The lower house should consist of representatives, each of whom should be annually elected by the tenants of an area of 20,000 acres. By a majority vote in each house the senate was to pass laws not repugnant to those of England,

¹ Passages from the Life of William Penn, p. 243.

nor subversive of the just rights of the proprietor. But any person could offer "that which was for the good of the state." The upper house alone should hold sessions and adjourn at pleasure. It should annually appoint all officers, both in church and state. It should also appoint committees of an equal number of "lords and tenants" to superintend financial and military affairs, and, "to rectify old laws and prepare new ones." Lastly, it should be empowered "to inquire into and punish all misdemeanors, by impeachment or otherwise, even in the proprietor himself." Of course this last provision did not meet with Penn's approval, for in another series of suggestions of a similar character, the words "in the proprietor himself" are significantly omitted.¹

Then a scheme appears to have been submitted which bore a greater resemblance to the one finally adopted, though the conditions of membership in the house of proprietors were the same as in the first plan. Provision was now expressly made that the proprietor might discharge his duties through a deputy, who should have the aid and advice of a council. The name parliament, also, takes the place of senate as the designation of the legislature, and it was proposed to call the upper house "the court or house of proprietors," and the lower, the assembly. The number of members in the former was increased to seventy, while the assembly should consist of two hundred freeholders elected by those who paid scot and lot, or who possessed fifty acres of land. It was expressly stated that the governor should preside in the house of proprietors, and should have three (not two) votes. The assembly should choose a speaker, and should have the right to impeach officials before the house of proprietors. A two-thirds, instead of a simple, majority in each house should be required for the passage of laws. In this scheme appears for the first time the proposal that, when appointments were to be made, either the

¹ Penn MSS., *Charters and Frames of Government*.

one house of the legislature or the other should present to the governor the names of double the number of persons required to fill the places, and from these the chief magistrate should make his selection. The Quaker mind seems to have revolted against the idea of a council appointed by the executive alone, and in this document it was proposed that each house of the parliament should name twenty-four persons, and from the forty-eight thus nominated, the governor should select his twenty-four councillors. Another hint of what was to appear in the first frame is the suggestion that the council be divided into three committees of eight. The first should supervise "peace and justice," the second "trade and treasury," and the third the "civil education and manners of the people." Each of these committees, moreover, should render an annual report to parliament. One-third of the council, *i. e.*, four from each house, should go out of office yearly, and all questions arising in parliament should be determined by ballot.¹ Then appear the religious and moral qualifications for office so characteristic of Puritans as well as Quakers. They were that all officers and members of parliament should be "such as professed faith in Christ, and were of good fame for a sober and honest life." Whenever needful the governor and six-sevenths of each house of parliament could amend the constitution.²

One of the persons interested in these projects of government now presented a series of objections to the above. He dwelt on the dangers incident to making the possession of large tracts of land the sole condition of membership in the upper house. He cited the House of Lords as a body in which rank and honor were combined with the possession of land to form the conditions of membership. He thought that

¹ Rotation in office and the use of the ballot were regarded by Harrington as essentials of an "equal commonwealth." Harrington, *The Commonwealth of Oceana* (Ed. by Morley), pp. 39-40.

² Penn MSS., *Charters and Frames of Government*.

the number of proprietors in the province would not be sufficient to form an upper house, and that until 1690 the number of freeholders would also be too small for such an assembly. Moreover, until the province should become well populated, the owners of 5,000 acres would probably sit personally in the upper house. But when owing to increase of numbers it might be found necessary to send representatives, he declared that then the proprietors who were to sit in person, and those who were to send representatives, should be carefully distinguished and specified. In this connection also he expressed the opinion that, on account of the similarity of the powers vested in the two houses of parliament, grave disputes between them might arise.¹ Thereupon a more elaborate scheme of government was proposed. As before, the government should consist of governor, council and parliament. The membership of the house of proprietors was increased to one hundred, but it was provided that all the members should be professed Christians and should be married.² To fill vacancies in the house of proprietors, the idea of presenting to the appointing officer or body double the number of persons required for that purpose again appears. Or, should the persons chosen by the house of freemen to fill the vacancies in the house of proprietors be unsatisfactory to that body, the governor should nominate double the number of persons requisite, and from them the house of freemen might make the necessary selection. With regard also to the appointment of officers by the governor, the powers of nomination possessed by both houses are similar to those of the preceding frames. Provision, however, was made for the election of certain local officers. Moreover, all officers upon their accession to office should give, instead of an oath, a reasonable bond, and subscribe a declaration that they would perform their duties. Officers generally were to

¹ "Suggestions concerning the parliament, by T. R., January 13, 1682." *Ibid.*

² *Cf.*, Harrington, p. 99.

be subject to removal by parliament with the consent of the governor, and their commissions were to be issued in the king's name, and signed by the governor.

The house of freemen should be composed of not less than two hundred married professed Christians, and disputes about the election of its members should be referred to a committee of the house of proprietors. With the exception that bills concerning taxation and revenue should originate in the house of freemen, the legislative equality of the two houses should be complete. But no law should be made to infringe the civil liberties of the people granted by Magna Charta, the Petition of Right and the Habeas Corpus Act; nor the rights of the proprietor, his heirs and assigns, as granted by the king. That this provision was not intended wholly to exclude legislative interference with the independence of the proprietor is shown by the provision that upon his death, and during the minority of his heirs, parliament should choose the executive. If the proprietor did not wish to reside in the province, parliament should select two persons of whom he should choose one to serve as governor. In addition to its regular legislative duties, parliament furthermore should assume the direction of administrative affairs. But when it was not in session, this branch of government should be entrusted to the governor and council. As before, the governor should have three votes in the house of proprietors. He should dissolve parliament at the close of its sessions; and, with the consent of the council, he might also call a special session of parliament. Moreover, "to the end that choice may be made freely without fear from any except God, and to avoid contention and confusion, all questions except in the council and courts of justice, or in the appointment of officers by poll, should be by the balloting-box as it is used at Gresham College, or as the governor and council shall direct." Provision was also made for an extensive judicial system, comprising the usual county courts, a provincial court, and a supreme court of seven judges, one appointed by the

governor, three by the house of proprietors, and three by the house of freemen. If, however, the supreme court should decide that any case, by reason of its importance or difficulty, deserved further consideration, an appeal lay to the governor and parliament. The scheme of government concludes with some paternal suggestions concerning matrimony, the maintenance of poor relatives, and the punishment of evil-disposed persons by their being put out to terms of service. At the end is a statement to the effect that amendments to the frame might be made by Penn and six-sevenths of each house of parliament, and that Penn promised to govern in accordance with it.¹

Up to this point it appears that Penn had patiently listened to the plans proposed by his associates. Now he comes forward with views of his own. They are called the "fundamental constitutions of Pennsylvania" and are twenty-four in number.² The document begins with loose moralizings about the nature and end of government, which reveal a strongly humanitarian spirit, but no systematic thought on the subject. They are of the same general character as those which appeared later in the form of the preface to the first frame of government.³ They start with the assumption that the interests of governors and the governed are the same. An attempt is then made to define government as a "constitution of good laws wisely set together for the good ordering of people in society."⁴ Then the proprietor, pursuing the same line of thought as in the "preface," insists that government is but a means to an end, viz.: the public good—hence, the necessity of considering what frame of government will "preserve magistracy in rever-

¹ "For a conclusion of all we declare that we hold it our glory that the law of Jehovah shall be the supreme law of Pennsylvania. Ordained by William Penn so far as in him lies, by and with the advice and approbation of the proprietors and freeholders of the said province, so far as in them lies, the — day of —, in A. D. 1681." Penn MSS., *Charters and Frames of Government*.

² *Ibid.*

³ *Charter and Laws of Pa.*, pp. 91-93.

⁴ Cf. Harrington, p. 16.

ence with the people, and best keep it from being hurtful to them."¹ An error in this will injuriously affect all succeeding generations. The trend of his thought was that the proprietary system should be modified by ideas from other systems, particularly the Jewish, permeated by a strong Christian and humanitarian spirit. In the first proposition appears the statement of what Penn considered to be the highest purpose of government, a statement which probably embodied the deepest conviction cherished by the Quaker mind concerning the subject. It was that government should secure to every person the "free enjoyment of his religious opinions and worship, so long as it did not extend to licentiousness, or to the destruction of others, that is to speak loosely or profanely of God, Christ and the Scriptures, or religion, or to commit any moral evil or injury against others." In this liberty of conscience every person should be protected by the civil magistrates. Similar provisions with regard to religious toleration appear in the "Laws agreed upon in England,"² in the "Great Law" passed at Chester, December 7, 1682,³ and in the charter of privileges of 1701.⁴ Closely connected with Penn's insistence on the moral nature and purposes of government was his demand that laws for the prevention and correction of vice and injustice should be vigorously and impartially executed. Passing from the higher and more general considerations to the specific details of government, Penn proposed the opinion that the province should be divided into twenty-four counties, each county into four hundreds, and each hundred into two tribes.⁵ The tribe should be the local election district, where the freeholders annually without regular summons from the governor should elect by ballot two persons "of best repute for virtue, wisdom and integrity." But until the province was

¹ For a similar expression see preface to the first frame of government. *Charter and Laws of Pa.*, p. 93.

² Sec. 35, *Ibid.*, p. 102.

⁴ *Col. Rec.*, ii, p. 57.

³ Chap. i, *Ibid.*, p. 107.

⁵ *Cf.*, Harrington, p. 79.

well inhabited, the sixteen representatives might be elected from the county at large. These 384 persons should constitute the assembly, the powers of which were to be as ample as those of the House of Commons in England. The strength of the democratic spirit in Penn, and his resolve that the government should serve the people, is well illustrated in the proposal that each member of assembly should bring instructions from his constituents. A record of these instructions should be kept in every tribe, and if any representative dared to "betray his trust," he should never again be allowed to hold office, unless the people were sure of his repentance and forgave him. Neither should any law be passed or repealed until the wishes of the constituents were known. As to the formation of the council, the assembly should choose from among its members two persons from each county, whose places should be immediately supplied by election from the tribes affected. One-fourth of the council, and consequently one-fourth of each of the committees into which it was divided, should retire yearly by lot. It should sit with the governor, distinct from the assembly, and should be considered the upper house. The two houses should possess equal powers in legislation. The council should receive from the assembly any legislative business that body might choose to present. After sufficient deliberation thereon, it should hold conferences with the assembly until an agreement was reached. Then the bills should be presented to the governor for his approval, but no law should be put into execution until the general assembly was dissolved. "All bills agreed upon by the council and the assembly, not infringing the rights of the proprietor either in his just share in the government or his property, which were all along intended to be acknowledged, secured and confirmed, and were hereby acknowledged and confirmed, and not contradicting the fundamental constitutions or just rights of the people, should within fourteen days after their presentment to the proprietor or his lieutenant, if he gave not his assent, stand good as if assented

to." When the assembly was not in session, the council should advise and assist the governor. For the performance of its administrative duties the council should be divided into four committees, differing only slightly in name and function from those which appear in the frame of 1682.

Another instance of the peculiar method of appointing officers is found in the suggestion that the freemen of every tribe should present yearly to the governor the names of two persons to serve as justices of the peace, while the county at large should do the same with regard to the position of sheriff. If within twelve days he had made no selection, lots should be drawn for the office, or the first person named might have it. After various provisions concerning the holding of county courts, and other matters of minor importance, the rights of free-born Englishmen were guaranteed to the people, and the document concludes with the declaration that, if the governor or his lieutenant "by evil insinuation and pernicious counsel, or by those in power or esteem with him, or from his mistaking the true extent of his authority, or possibly by the instigations of his own ambition, should demand or require any officers or magistrates to do anything contrary to the fundamentals, or any law duly made," the officer should disregard any such order, or be accountable to the assembly for his misdemeanor. It was also stated that, at the opening of each session of the general assembly, the constitutions should be read and assented to in a prescribed form.¹

In some respects these propositions appear not to have given satisfaction. But after a number of suggestions had been made, it was agreed that the government should consist of the governor and a grand assembly or parliament of two houses elected by the freemen of the province. The upper house called the senate or council should consist of seventy²

¹ Penn MSS., *Charters and Frames of Government*.

² *Cf.*, Harrington, p. 33.

men, "most eminent for virtue, wisdom, and substance." The lower house or assembly for seven years should be composed of all the freemen, and after that time of three hundred men "eminent, honest, and fit for government." In the decision of legislative matters the ballot should be used. The council also should be subject to the usual principle of rotation, and, as the standing council of the governor, should be in continual session. Now appears for the first time a proposition which, as practically embodied in the frame of government of 1682, was the cause of much controversy in the province. It was this: "The work, service, and duty of the first house shall be to prepare, draw up, and propose all matters, laws, and public concerns of the grand assembly; and the work, service and duty of the second [house] shall be to determine or resolve in the affirmative or negative thereto."¹ As before, the governor should preside in the upper house, and should have three votes. In case of the death of the proprietor, the council should appoint a guardian for his heir, if an infant, who should also act as governor until the heir became of age. With regard to the appointment of officers, it was provided that during the life of the proprietor they should be appointed directly by him. But after his death the method of presentation should be adopted.² During the life of the proprietor also this frame of government should be in the keeping of himself and twelve of the principal landholders, whose number should by co-optation remain perpetual. These twelve persons should be known as the "conservators" of the charter. Hence, if any law or ordinance should be declared by them contrary to the charter, it should immediately become null and void.³

¹ Cf., Harrington, pp. 29-31, 35, 39-40, 44, and Locke's "*Fundamental Constitutions of Carolina*," Sec. li; Carroll, *Historical Collections of S. C.*, ii, p. 375.

² A similar provision may be found in Section xvi. of the frame of government of 1683. *Charter and Laws of Pa.*, p. 158.

³ Penn MSS., *Charters and Frames of Government*. A curious resemblance:

These suggestions appear to have met with general approval, and they were practically embodied in the frame of government of April 25, 1682.¹ In addition to the frame a series of agreements called the "Laws agreed upon in England"² was also ten days later entered into by Penn and his associates. The first article of these laws states that the "charter of liberties declared, granted, and confirmed * * * by William Penn, governor and chief proprietary of Pennsylvania, to all the freemen and planters of the said province, is hereby declared and approved, and shall be forever held for fundamental in the government thereof, according to the limitations mentioned" therein. But to the preamble of the frame was prefixed the statement, that both the frame and these laws should be further explained and confirmed by the first provincial council to be held in the province.³

Whatever satisfaction the frame of government may have given to the majority of Penn's associates, it was by no means pleasing to Benjamin Furly, a personal friend of the proprietor, and the promoter of the first German emigration to America. His critical comparison of the frame with the twenty-four "fundamental constitutions," is worthy of note, as showing the clearness with which he saw the impracticability of the scheme.

may be noticed between this provision and one to be found at the close of the first constitution of the commonwealth of Pennsylvania, Sept. 28, 1776. The latter provided that every seven years a council of censors should be elected to serve for the space of one year. Its duties should be to ascertain whether the constitution had been preserved in every part; whether the executive and legislative branches of government had done their duty, and had usurped no powers; whether taxes had been properly levied and collected, how public money was expended, and how the laws were executed. As a result of its investigations, it could pass a vote of censure, order impeachments, recommend to the legislature the repeal or amendment of laws, or call a constitutional convention. *Poore, State and Federal Constitutions*, p. 1548.

¹ *Charter and Laws of Pa.*, pp. 94-98.

² *Ibid.*, pp. 99-103.

³ "The charter made in England was but probationary." *Penn and Logan Corresp.*, ii, p. 17.

"I far prefer," said he, "thy first draught," *i. e.*, the constitutions, "to this last, as being most equal, most fair, and most agreeing with the just, wise, and prudent constitutions of our ancestors. * * * Indeed I wonder who should put thee upon altering them for these¹ and as much how thou couldst ever yield to such a thing. Especially after thou wert so much satisfied in them as to charge all thy children, and theirs, to love and preserve them as being the establishment of thee their father and ancestor, as *the discharge of thy conscience to God the giver of this country to thee and them, and as they hope to keep it and His blessing upon it.* As much do I wonder that any of the freeholders that had subscribed them with *much clearness and satisfaction* as the ground and rule of all future laws and government, promising every one for himself *that, by God's assistance* they would remember, love and preserve them *to the utmost of their power*, as fundamentals, *inviolably*, charging their posterity to do the same, *as they hope to enjoy what they should leave them, and the blessing of God with it.*"

¹ From the materials at hand it is impossible to tell what led to the change, for the "fundamental constitutions" are certainly nearer the Quaker ideals. It is possible, however, that the large landholders among Penn's associates supposed that they would constitute the council, and for that reason believed that the power to prepare and propose laws to the assembly would strengthen their position and dignity. The frame of government provides that they should be elected by the freemen in the same way as were the representatives for the assembly, but with this difference, *viz.*, they should be men of most note for virtue, wisdom, and ability, while no qualifications are prescribed for members of assembly. In the first place all the schemes of government which have been examined provide that the upper house should consist of the large landowners. Penn's "fundamental constitutions" alone suggest otherwise. Secondly, the word "ability" in Penn's time meant *wealth*. Thirdly, Capt. Markham, who was well acquainted with the whole proceedings, distinctly states that the associates of the proprietor, "unless pleased, and granted whatever they wanted, would not have settled his country" (Gordon, *Hist. of Pa.*, p. 63). For these reasons it may be regarded as probable that the frame of government is a concession to the large landholders, who by their position as councillors might in their powers of legislation dominate the assembly, and in their powers of administration as well as legislation, dominate the governor, *i. e.*, the proprietor.

In the first place he criticised that part of the frame which provided that the assembly should be deprived of the power to prepare bills, and of the right to adjourn itself. He thought that to give the exercise of these powers to the council was to divest "the people's representatives (in time to come) of the greatest right they have, and will lay morally a certain foundation for dissension." "For the people of England," said he, "can never by any prescription of time be dispossessed of that natural right of propounding laws to be made by their representatives." Mr. Furly apparently overlooked the fact that, as the council was elected by the people, it represented them, strictly speaking, as truly as did the assembly. He believed that, to have a great nation forbidden the passage of laws, except such as the council should see fit to propose, was inconsistent with public safety, and would bring destruction upon those who advocated the plan. In order to guard against the liability of corruption by an unscrupulous governor, who with his three votes might find many opportunities to gain an undue influence, he preferred that the council should be elected every three months, either by the general assembly, or by the people.

In this connection he urged that the powers of the governor in the council be limited by express words to three votes, thus barring out the possibility of the use of the veto. He declared that in the appointment of judges the assembly should nominate two persons for the office, and that of these the council, and not the governor, should make the selection. Moreover, he thought that the committees of the council should be subject to the supervision of the assembly. He suggested therefore that the assembly should possess the powers and privileges granted by the "fundamental constitutions," and that "the provincial council whether of 48 or 72 [should be] brought to its place, there allotted to it." He disapproved strongly of the omission in the frame of any provision for the responsibility of representatives to their constituents. He thought

that seventy-two might be a proper number of representatives, but he did not want the frame to continue till the population should be large enough to furnish five hundred representatives. Hence, he proposed that the frame should be put into operation only for a certain number of years, at the end of which time it might be amended or abolished by two-thirds of both houses. This was to offset the provision in the frame which declared that amendments could be adopted only with the consent of the governor and six-sevenths of the freemen, "because," said he, "it binds our posterity forever, and gives the governor a negative voice."¹

The powers of government were by this frame of 1682 vested in the governor and freemen, and those of the latter should be exercised in two representative bodies, the provincial council and the general assembly. The governor was to be the president of the provincial council and of the standing council, and should act as chairman of its committees. As president of these, and by virtue of the fact that he was the proprietor or his representative, the governor was of course the chief executive officer of the province. In the provincial council the governor had three votes, but no mention is made of his possessing the right of veto either over the acts of the council, or of the assembly, or of the two acting conjointly. In order to start the government going, the proprietor declared in the frame that he would appoint judges, treasurers, masters of the rolls, sheriffs, coroners, and justices of the peace, to hold office during good behavior. But there is no provision in the document authorizing the governor to perform any act independently of the council. In case the proprietor were under age, the council might appoint three guardians for him, one of whom with the consent of the other two should perform all the duties of governor during the period of minority. The council appears in two forms, the provincial council or council

¹ Penn MSS., Ford *vs.* Penn, "B. F. Abridgment out of Holland and Germany. Laws of Gov't Pense."

in full session, and the standing council. The provincial council was to consist of seventy-two members elected by the freemen. They should be the men most noted for wisdom, virtue and ability. This body, with the governor as its president, was empowered to propose and lay before the general assembly all bills that it thought should be enacted into law. These bills were to be published thirty days before the meeting of the general assembly, the people thus being given an opportunity to form and express their opinion concerning them. Hence this frame affords one of the proofs that the idea of the referendum existed in the seventeenth century. Besides its power to initiate legislation, the provincial council was charged with the execution of the laws, the establishment of courts of justice, the preserving of the peace, and the upholding of the constitution of the province, the management of the public treasury, the founding of cities, ports, and towns, and the building of highways, the erecting of schools, and the encouragement of literature, science, and invention. Once a year the council should present to the governor a list of double the number of persons required to serve as judges, treasurers, and masters of the rolls, and from this within three days he must make the selection, otherwise the first named should be entitled to the office. It had also the right of summoning and dissolving the general assembly. These were the duties of the council in general session, or the provincial council proper. But for the better exercise of its functions, the council was empowered to divide itself into four committees of eighteen members each.¹ The first was a committee of planta-

¹ In the "fundamental constitutions," the duties of the four committees of council were the following: The first committee should supervise the administration of justice. The second should have charge of trade and manufactures, and should take all means needful to prevent fraud and corruption in business transactions, and to suppress begging by employment of the poor. The third should control the public treasury, subject to the general assembly. The fourth and last committee should "inspect the conversation of the people and the breeding of youth," and should direct the management of schools, and the cultivation of the fine arts. *Ibid.*, *Charters and Frames of Government*.

tions. It was to have charge of the location and settlement of cities and market towns, the opening of ports, the building of highways, the settlement of plantations, and the hearing and deciding of all suits concerning them. The second was a committee of justice. It was to maintain the peace and punish those who sacrificed public to private interest. The third was a committee of trade and finance, with power to encourage agriculture and manufactures, to regulate commerce according to law, while the expression, "defray the public charge of the province," would seem to imply that it should have immediate control under law of its revenues and expenditures. The fourth was a committee of manners, education, and arts, upon which was specially devolved the duty of restraining immorality and promoting virtue. One-third of the members of each of these committees was to constitute its quorum, and the quorums together were to form the standing council of twenty-four members. This being a quorum of the provincial council, should exercise all the powers that belonged to that body, except in those affairs of greater moment, the consideration of which must be in the presence of two-thirds of its members. Such were the organization and powers of the first body through which the freemen were to act. Its independence of the governor was secured by the provision that it should sit upon its own adjournments.

The general assembly for the first year was to be a meeting of all the freemen of the province, called to establish the government and accept the laws. But thereafter it should consist of two hundred members, and, if necessary, the members might be increased in time to five hundred. These should be annually chosen by the freemen at the times and places of electing the provincial council. But the regulating of such elections was left to future legislation. The functions of the general assembly were clearly subordinate to those of the provincial council. It could impeach criminals before the council, while in legislation it had the right to propose amendments to the bills laid before it by

the council, and finally to approve or reject them. These are all the powers specifically mentioned as belonging to it. The position of inferiority assigned to the assembly in the frame, is made clear by the provision that it should be called and dismissed by the council. The inference from the document is, that the two bodies were to sit as separate and distinct houses, and such became the practice. The frame of government could be amended only by the consent of the governor and of six-sevenths of the provincial council and of the general assembly.

Taking up now somewhat in detail the history of the province, so far as it bears on the development of the frames of government, we have noticed in the discussion of the land system that the proprietor, April 10, 1681, commissioned Capt. Markham as deputy governor, and ordered him to call a council to consist of nine persons. But little is known of their action, except that government was established at Upland.¹ On October 27, 1682, the proprietor himself arrived in the Delaware, and landed at Newcastle. Having made arrangements for the government of Newcastle and adjacent places, Penn called the first assembly of the province at Upland. On November 18, he sent writs to the sheriffs of the respective counties requiring them to "summon all freeholders to meet on the 20th instant, and elect out of themselves seven persons of most note for wisdom, sobriety, and integrity to serve as their deputies and representatives in general assembly, to be held at Upland in Pennsylvania December 6th next."² No members for the provincial council were chosen, nor was the council organized till March 10 of the following year. On the day appointed the assembly met at Chester (the name given by Penn to Upland), and elected as chairman Nicholas More, president of the Free Society of Traders. The first regular business was the appointment of a committee of elections and privileges, another of justice and grievances, and still another to "prepare pro-

¹ Hazard, *Annals of Pa.*, p. 535.

² *Ibid.*, p. 603.

vincial bills." At the same time among the rules adopted by the assembly was the following: that any member could propose bills, except those which dealt with the levying of taxes.¹ On the third day of the session the assembly received from the proprietor copies of the "Laws agreed upon in England," and ninety bills called the "written laws or constitutions." After some discussion sixty-one of the latter were embodied in the "great law or body of laws of the province of Pennsylvania."² As soon as the laws were disposed of, the members from the Lower Counties desired to return home. A debate on the question followed. The chairman thought this desire for adjournment was uncomplimentary to the proprietor, and endeavored "after a divine manner" to induce the obstinate members to appreciate Penn's "condescension." But the proprietor later agreed to the adjournment.³

On February 20, 1683, Penn ordered a general election to be held for the purpose of choosing seventy-two persons to serve as members of the provincial council, and directed that, when the council was convened, all the freemen should meet at Philadelphia in general assembly. Prior to this time, however, Penn had seen the impossibility of carrying out the provisions of the frame of government relative to the number of the council. He told Markham⁴ that twelve persons must be chosen by each county in accordance with his writs to the sheriffs, but that later petitions might be sent to him to allow three of them to serve in the council, and nine in the assembly. In order to secure the rotation in office required by the frame, he stated that the petitions should declare which one of the three persons was elected for three years, which one for two years, and which one for a year. Hence it is probable that, if this violation of the frame was not suggested by Penn him-

¹ *Votes*, i, pt. i, pp. 1, 3.

² *Charter and Laws of Pa.*, pp. 107-123, 478-481; Proud, *Hist. of Pa.*, i, p. 207; *Col. Rec.*, i, pp. 276-277.

³ *Votes*, i, pt. i, p. 6.

⁴ *Pa. Mag. Hist.*, vi, p. 466.

self, he was at least instrumental in bringing it about. In fact it is not unlikely that the whole thing was arranged before the council met. With the return of the sheriffs came the petitions expected, in the form proposed by the proprietor. The reasons given were the slender population, the unfitness of most of it to discharge public duties, and its inability to support a larger representation.¹ The truth of one of Furly's criticisms is thus made apparent. After these petitions had been read in the council the frame of government was also read. At length it was agreed that the reasons set forth in the petitions were valid, and it was determined that the seventy-two persons had full power to sit both as councillors and members of assembly in the manner designated. But the proprietor was requested that this alteration of the provisions of the frame of government should not deprive the people of the other rights given therein, to which request Penn replied that "they might amend, alter, or add for the public good, and that he was ready to settle such foundations as might be for their happiness, * * * according to the powers vested in him."² The action of the council was not satisfactory to every one. Nicholas More gave his opinion of it in no measured terms. He asserted that the members of the council had acted in a grossly unconstitutional manner. He declared that they had broken the charter, and that hundreds in England would curse them for it. He further denounced their conduct as treasonable in character, believed the evil effects of it would be visited upon them and their children, and said that on account of it they would be liable to impeachment. More was called before Penn and the council to answer for these rash statements. He pleaded that he had raised the question of illegal action rather than asserted it, but his conduct was pronounced by the council unreasonable and imprudent, and he was dismissed with a reprimand.³

¹ Hazard, *Annals of Pa.*, p. 603.

² *Col. Rec.*, i, p. 58.

³ *Ibid.*, p. 59.

As we have already seen, the frame of government was not suited to the existing condition of affairs. The first objection lay in the absurdly large number of members in council and assembly. A second objection was, that the rights of the assembly in legislation were too limited. Here again the criticism of Furlly is most pertinent. The lower house desired to have the right to originate measures.¹ With regard to this matter the council agreed to hold a conference with the assembly. One member of the assembly then moved that the power of that body to discuss at length bills sent to it from the governor and council should be considered. Several members held the view that the "house presuming to take that power seemed too much to infringe upon the governor's privileges and royalties, and to render him ingratitude for his goodness towards the people." They agreed that the "governor's good will and demeanor towards the people being considered, they were all in duty bound rather to restore that privilege in his too great bounty he had conferred upon them, viz., of having the power of giving a negative voice to bills proposed unto them by himself and the provincial council, than to endeavor to diminish his power." The silence of the other members was the first severe shock to the proprietor. Penn began dimly to realize that the harmony he had hoped to see firmly maintained between himself and the people, was soon to be impaired. Not long after, the speaker of the assembly referred to its consideration "the good disposition and wisdom of the governor," while a member called its attention to the "undeserved reflections and aspersions cast upon the governor, which the governor himself and all good members and subjects did not without cause resent as evil from any subject, but especially proceeding from any of the members of assembly." Then the

¹ "A very good proposal was made by a member of the house, that it might be requisite by way of petition, or otherwise, to move the governor and provincial council that the house might be allowed the privilege of proposing to them such things as might tend to the benefit of the province." *Votes*, i, pt. i, p. 7.

proprietor asked the assembly what counter security it would give him, in case by enacting laws contrary to the royal charter, it should cause the same to be forfeited. At the same time he dwelt upon the fact that, "out of his great love and kindness, he had granted the people a charter, whereby they had the privilege of establishing laws themselves, and of giving a negative voice to all bills preferred unto them by the governor and provincial council, if they approve them not." The assembly thereupon resolved that the governor might have a veto power over the acts of the council, but not over those of the assembly.¹

Hence the conference resulted in no concessions to the house, but to the guaranteed right of the council to prepare all bills was added a proviso that they should not be inconsistent with the powers granted by the royal charter. The assembly was much impressed by its favorable reception at the hands of the governor on this occasion, and immediately on its return from the conference subscribed a declaration of fidelity. Then the clerk of the council brought into the assembly a bill concerning the time when the sessions of the council and assembly should be held, and the method to be observed in their proceedings in legislation. Upon this important measure a long discussion ensued. After several alterations had been made, the bill was called an "act of settlement" and passed March 19. It was declared that, because the freemen of the province and territories were deeply sensible "of the good and kind intentions of the proprietor and governor in this charter, and of the singular benefit that redounded to them thereby, and were desirous that it may in all things best answer his design for the public good, * * * they unanimously requested some variations, explanations, and additions in, of, and to the said charter." It was therefore enacted that the number of councillors and assemblymen desired by the people should be allowed to be the provincial council and general assembly of

¹ *Votes*, i, pt. i, pp. 8-10.

the province. The council and assembly already elected were determined to be legally constituted for that year. Thereafter, the council should consist of three members, and the assembly of six from each county. This number was subject to future changes by the legislature, but was never to exceed the limitations of the frame of government. The time for holding the annual elections was changed. With regard to the preparation and proposing of bills, it was enacted that the governor and council should have the power to declare and propose to the assembly all bills that they "should jointly assent to * * * that are not inconsistent with, but according to the powers granted by the king's letters patent to the proprietary and governor." The bills should be published "in the most noted towns and places twenty days before the meeting of the assembly." "All questions upon elections of representatives and debates in provincial council and general assembly in personal matters," should be decided by the ballot, but all questions about preparing and enacting laws, should be determined in the ordinary manner. The governor, council, and assembly together should be known as the general assembly. Lastly, "that the freemen of this province and territories might not on their parts seem unmindful or ungrateful to their proprietary and governor for the testimony he had been pleased to give of his great good will toward them and theirs, nor be wanting of that duty they owe to him and themselves," they declared their hearty acceptance of the frame of government, and their humble acknowledgment of the same. They also promised that, by virtue of the powers granted them by it, they would do nothing, whereby the rights, property, and privileges given by the royal charter and the Duke of York's deeds of enfeoffment might in any way be violated.¹ By this act it will be seen that the proprietor showed his willingness to concede to the people substantially what they asked, and also that he in turn secured their promise that he should not suffer for his liberality.

¹ *Charter and Laws of Pa.*, pp. 124-126.

The act of settlement was regarded as a temporary measure until the frame of government could be more closely examined, and its relation to the actual needs of the colonists ascertained. To this end Penn asked the assembly whether it would like a new frame of government. The question was unanimously answered in the affirmative. When the proprietor agreed to grant it, the assembly immediately appointed a committee to draw up and present to him "a salutation by way of the house's acknowledgment of his kindness."¹

It is thus to be seen that the request for a new charter came directly from the people, and not from the proprietor.² Indeed,

¹ *Votes*, i, pt. i, p. 12; *Col. Rec.*, i, p. 63.

² Benjamin Franklin (*Works*, iii, pp. 124-127) has introduced into his narrative of the events of 1683 disjointed passages from a "remonstrance," supposed to have been sent to the proprietor by the assembly in 1704, as if the complaints of an angry and contentious assembly twenty years later could be adduced as evidence of the discontent of the people from the beginning. He says, "In the interval between this session at Chester and the next at Philadelphia, Mr. Penn, notwithstanding the act of settlement, furnished himself with another frame . . . and concerning this again, the assembly of 1704, in their representation aforesaid, thus freely expostulated with the proprietor: 'By a subtle contrivance and artifice laid deeper than the capacities of some could fathom, or the circumstances of many could admit time then to consider of, a way was found out to lay that aside, and introduce another charter, which thou completedst in the year 1683. . . . The motives which we find upon record inducing the people to accept of the second charter were chiefly two, viz., that the number of representatives would prove burdensome to the country; and the other was that, in regard thou hadst but a treble vote, the people through their unskilfulness in the laws of trade and navigation might pass some laws over thy head repugnant thereto, which might occasion the forfeiture of the king's letters patent, by which this country was granted to thee; and wherein is a clause for that purpose, which we find much relied upon, and frequently read or urged in the assembly of that time, and security demanded by thee from the people on that account. As to the first motive, we know that the number of representatives might have been very well reduced without a new charter; and as to the laws of trade, we cannot conceive that a people so fond of thyself for their governor, and who saw much with thy eyes in those affairs, should, against thy advice and cautions, make laws repugnant to those of trade, and so bring trouble and disappointment upon themselves by being a means of suspending thy administration; the influence whereof and hopes of thy continuance therein induced them, as we charitably conclude, to embark with thee in that great and weighty affair, more

it is probable that the Quakers feared lest the presence of people who were not of their religion¹ might cause them to lose the power they so much coveted, and for this reason asked the proprietor to take back part of what he had given up.² They relied of course upon their ability to maintain their influence over the good-natured proprietor. On the other hand, we have noticed that Penn was unwilling to be responsible for the advantage the people might take of the fact that the only opposition he could make to the passage of their bills was by his three votes in council.³ This

than the honor due to persons in those stations, or any sinister ends destructive to the constitution they acted by. Therefore we see no just cause thou *hadst to insist upon such security, or to have a negative upon bills to be passed into laws in general assemblies*, since thou hadst by the said charter, pursuant to the authority and direction of the king's letters patent, formed these assemblies, and thereupon reserved but a treble vote in the provincial council, which could not be more injurious to thee than to the people. . . Thus was the first charter laid aside, contrary to the tenor thereof and true intent of the first adventurers.'"

¹ I mean by this the representatives from the Lower Counties. At the meeting at Chester, in December, 1682, there appears to have been a contest over the chairmanship. But the absence of two persons who were not of the Quaker persuasion, made it possible for the Friends to carry the day. *Pa. Mag. Hist.*, vi, pp. 468-9.

² "Friends have, several of them, lamented that I have given so much power away as I have done. At least till truth's interests had been better settled, and desire me to accept of it again, saying that, as God so signally cast it into my hand, and they believe for a purpose of glory to His name, and for the good of His people, and since the eyes and hearts of the people are after me in so eminent a manner, if I receive it not, they shall as yet be little regarded in the use of it." *Ibid.*

³ Even this slight power was not pleasing to Jasper Yeates, whom we have had occasion to notice before as an exacting and captious Quaker. A change in his religious opinions must have occurred later, for he was one of the commissioners named in the king's *dedimus potestatem* of 1701 to administer an oath (*Col. Rec.*, ii, pp. 62-63). In reply to the complaint of Yeates, in 1683, Penn declared that his three votes in the council might be offset by the votes of three of the humblest freemen in the province who owned fifty acres of land apiece, while he was proprietor and governor and the possessor of millions of acres. Yeates said that Penn had made suitable provision for his heirs during their minority, but not in case they were idiots or atheists. Penn asked him what

was probably the reason why the veto power was restored to him.¹

A lengthy consideration of the relative merits of the provisions of the frame of government and of certain amendments thereto followed in the assembly. The committee previously appointed to prepare the message thanking the proprietor for his kindness was further authorized to announce to him and the council that the assembly had gratefully accepted his offers and was ready to propose what it desired might be inserted in the frame of government.² In the various conferences held with the council on this subject, a notable objection made by the assembly was that to the reservation in the new frame of the right of the governor to continue officers appointed by him in office during life, or good behavior.³ It agreed, however, to allow him during his life to appoint officers, but at his death the council and assembly should have the right to make nominations in the manner provided in the first frame. Desirous of offering to the assembly a final opportunity of giving its opinion on an important matter after the new frame had been read, the proprietor asked whether it desired the maximum

proof there was that the heirs of the freemen might not be the same. Yeates also thought that the requirement of a property qualification for the suffrage or for office-holding, was radically wrong. The proprietor held a different view—"What civil right," said he, "has any man in government besides property? Is it not men's freehold that entitles them to choose or be chosen a member to make laws about right and property? Wilt not thou allow me and my heirs as much as three fifty-acre men have in the government, that have fifty hundred times more property? No, Jasper, thy conceit is neither religious, politic, nor equal, and, without high words, I disregard it as meddling, intruding, and presumptuous." *Pa. Mag. Hist.*, vi, p. 471.

¹ "That which was the great objection at first was that I would not stand with my grant and estate as security to the crown for their use of the negative voice * * * unless they and theirs would be a counter security to me and mine, which after two or three days consideration they agreed rather to leave that power and me the use of it, than to answer for them and theirs." *Penn and Logan Corresp.*, ii, p. 17.

² *Col. Rec.*, i, p. 65.

³ *Ibid.*, p. 69.

number of members to be increased to five hundred or to remain at two hundred, as already embodied in the new frame. It was unanimously agreed that the number should be two hundred. On April 2, the clerk of the council read to the council and assembly the new frame of government, and the proprietor declared that what was inserted therein was by him solely intended for the benefit of the freemen, "and prosecuted with much earnestness in his spirit toward God." Then he signed and sealed the charter, and handed it to the speaker of the assembly and to two other members, "who received it in the name of all the freemen of the province, by signifying an acknowledgment of the governor's kindness in granting them that charter of more than was expected liberty." Thereupon the members of the council and assembly, as well as certain residents of Philadelphia who were present, signed the charter, and it was committed to the care of such persons "as were thought most fit to be entrusted with a matter of so great concernment." The committee which received the new charter was ordered to restore the old one with the hearty thanks of the house, and later an "acknowledgment of the governor's favors was writ and subscribed by the members."¹

A comparison of the provisions of the old frame of government with those of the new shows the following changes: The council should consist of not less than eighteen members, three from each county, nor more than seventy-two, while the assembly should consist of not less than thirty-six, nor more than two hundred. The possession by the governor of three votes in the council was abolished. This would indicate that he was to have the veto power, but its exercise was limited by the provision that he should perform no public act without the advice and consent of the council. The division of the council into committees was abolished, but the standing council of one-third the entire number of members was continued. The additional provisions were: first, that the guardian of the pro-

¹ *Col. Rec.*, i, p. 72; *Votes* i, pt. i, pp. 21, 23.

prietor's heir, if a minor, and appointed in the manner prescribed by the first frame, should have the management not only of the public affairs of the province, but *also of the private estate* of his ward, and be yearly accountable for the same to the provincial council, until the heir came of age. This provision, showing as it does how the proprietor regarded the freemen and himself as one great family, of which he was head, was omitted, as will be seen, in the charter of privileges of 1701. Secondly, the estates of aliens should be allowed to descend to their heirs, as if they had been naturalized. Thirdly, the privilege of hunting and fishing anywhere in the province, except on duly located manors or other private property, was given in general terms. Both these provisions may have been the result of Furly's criticisms.¹ Moreover, full and quiet possession of lands to which any person had lawful or equitable claims was guaranteed, with the exception only of such rents and services as were or ought to be reserved to the proprietor.² Lastly, the absolute power of appointing officers was reserved to the proprietor during his lifetime.

The first meeting of the assembly under the new frame of government took place at Newcastle in May, 1684. In a contest for the speakership between Nicholas More and Joseph Growden, both of Philadelphia, the former was elected. The bills, twenty in number, prepared by the council were passed into laws.³ They do not seem to have given universal satisfac-

¹ In this connection it may be said that, out of fifteen laws declared at this session to be fundamental, nine had been suggested by Furly to be so declared. *Charter and Laws of Pa.*, p. 154; *Pa. Mag. Hist.*, October, 1895.

² *Ibid.*, pp. 155-161.

³ To show the good feeling that existed at this time between Penn and the assembly, one of these laws may be cited. It was enacted that, if any person should endeavor to injure the proprietor or to deprive him of his government, or to act in any hostile manner toward him, he should forfeit half his estate, real and personal, and be imprisoned for life. Also if any person should, by speech or writing, attempt to incite the people to hatred of the proprietor, he should be imprisoned for a year and suffer corporal punishment adequate to the offense. Provision was made, however,

tion, for even More declared his disapproval of them in most emphatic terms.¹ In spite of this fact More stood high in the favor of the proprietor, and was appointed chief justice. Subsequently, however, as will appear, disgrace if not punishment followed his malfeasance in the high office with which he was entrusted. Unfortunately for Pennsylvania, the proprietor was compelled to return to England. The dispute with Baltimore had assumed such proportions that it became necessary for him to give his personal attention to the prosecution of the claim at court. Just before he embarked for England he commissioned the council, of which Thomas Lloyd² was president, to act as governor. But in order that no encroachment should be made on the powers still reserved to him, he carefully limited the right of appointment.³ The first assembly after his departure met at Philadelphia in May, 1685. As early as this time there were signs of the serious trouble between the council and the assembly, which, during the years of the enforced absence of the proprietor, was the cause of much grief to him. The first misstep was made by the president and council in their endeavor to change the style of promulgated bills, and their failure properly to publish them. In the fourteenth article of the frame of government of 1683 it was provided

that indictment should take place not later than nine months after the offense had been committed. *Charter and Laws of Pa.*, pp. 173-4. On account of the opposition of Fletcher, the royal governor, this law was not in the list of those confirmed by him in 1693. *Ibid.*, pp. 190-191; *Col. Rec.*, i, p. 406.

¹ *Col. Rec.*, i, p. 109.

² "My love and my life is to you and with you," wrote Penn to Lloyd and others in the council, "and no water can quench it nor distance wear it out, or bring it to an end. I have been with you, cared over you, and served you with unfeigned love * * * and now that liberty and authority are with you, and in your hands, let the government be upon His shoulders in all your spirits, that you may rule for Him under whom the princes of this world will one day esteem it their honor to govern, and serve in their places." *Passages from the Life of William Penn*, p. 297. Proud, *Hist. of Pa.*, i, p. 288.

³ *Col. Rec.*, i, p. 242.

that the laws shall be enrolled in this style, "by the governor, with the assent and approbation of the freemen in provincial council and assembly met." In plain violation of this provision of the frame, the council proposed the bills for this session under the style, "by the authority of the president and council." Against this proceeding the assembly entered an earnest protest, and refused to consider any of the bills, unless the style of their promulgation was made to conform to the frame. This determination of the assembly the council found it impossible to withstand. Accordingly it agreed that the old style of promulgation should be continued.¹ Satisfied with this concession, a majority of the assemblymen proceeded to the consideration of the bills. One point of objection still remained. The frame of government provided that all bills to be passed into laws should be published in every county twenty days before the meeting of the assembly. During the discussion of the bills in the assembly several members entered a written protest, "against all proceedings relating to the promulgated bills, as not being published according to the tenor of the charter," claiming that the action of the council in afterwards amending the style of the bills did not legalize them. On the first bill considered there was a tie vote, and the speaker for this very reason voted against it. An accommodation of the differences was at length reached, by which ten of the bills became laws.²

Aside from its disagreement with the council, the assembly was the scene of much personal jealousy. One member was actually expelled for a mere trifle, but was readmitted the following morning. But the chief matter was the expulsion and impeachment of More. It is probable that in his position as legislator and chief justice he was possessed of considerable influence. There are evidences of his arrogant and offensive demeanor toward the officers and members of the assembly.

¹ *Col. Rec.*, i, p. 134; *Votes*, i, pt. i, p. 31.

² *Votes*, i, pt. i, p. 32; *Charter and Laws of Pa.*, p. 175 *et seq.*

During the consideration of the bills he frequently interrupted the proceedings by captious protests. Indeed he went so far as to say that "it were well if all the laws were dropped, and that there never would be good times as long as the Quakers had the administration."¹ This conduct brought to a crisis the intentions of More's enemies, for, on May 15, a bill of impeachment of ten articles was brought in against him.² Among the charges he was accused of assuming unwarranted and arbitrary power, of sending illegal writs to sheriffs, and of refusing to entertain a verdict brought in by a lawful jury. It was also said that he had declared himself not responsible to the council, and had denied its authority. For these reasons he should be impeached as a "corrupt and aspiring minister of state." One member complained that More had called him a person of a seditious spirit. The house immediately voted that More had violated its privileges, and he was informed that, if he did not submit to its censure, he should be ejected. The charges were then ordered to be read, and More was requested to withdraw from the house while this was being done. It was voted by the assembly to impeach him on each article, and a committee was appointed to prosecute him before the council. The house also requested the president and council to remove him from his position as chief justice. In response they appointed a committee to acquaint More with the fact that the assembly had preferred charges against him, and that his presence was required in council. There appears, however, to have been but little desire on the part of that body to try the case, for when the assembly proposed to meet it for a conference on the matter, the reply was made that it had other business on hand. Objections were also raised by the council to the articles of impeachment, because they were not directed to the council and were not subscribed by the speaker or any of the assembly. Meanwhile More, still de-

¹ *Col. Rec.*, i, p. 135 *et seq.*

² *Votes*, i, pt. i, p. 33.

fiant and insolent, refused to appear at the bar of the house, and declared that "he would have to be voted into the house as he had been voted out," before he would appear. The patience of the assembly at length became exhausted, and, May 18, More was formally expelled from his seat.¹

The failure of the council to co-operate with the assembly made it extremely difficult for the latter to enforce its commands in connection with this affair. A notable instance of contempt of its authority appears in the conduct of Patrick Robinson, clerk of the provincial court. He had been ordered to produce before the assembly the records of the court for the use of that body in the trial of More. This he refused to do. Thereupon the assembly commanded the sheriff to bring him before it. He still refused to obey the assembly, and said that it had "acted arbitrarily, and had no authority." Subsequently, in the presence of the council, he expressed his contempt for the proceedings against More, and asserted that the articles of impeachment had been drawn "hob nob at a venture." For this conduct he was voted by the assembly "a public enemy to the province and territories, and a violator of the privileges of the freemen in assembly met." At the same time the council was called upon to remove Robinson from office, and a committee consisting of the speaker and two other members was appointed to demand satisfaction. On his way to the council the speaker was threatened by Robinson with bodily harm. His actions were censured by the council, but it resolved that it could not legally remove him from office until "convicted of ill fame, and those crimes and misdemeanors alleged against him."² In reply to a request of the same tenor from the assembly, the following year, the council stated that "it was not proper nor seasonable to be answered, nor was it signed by any of the as-

¹ *Votes*, i, pt. i, p. 35.

² *Ibid.*; *Col. Rec.*, i, p. 142.

sembly." Robinson however agreed to resign within three months, and the proceedings against him were dropped.¹

On June 2, 1685, More was ordered by the council "to desist and cease from further acting in any place of authority or judicature," until the charges against him were either proved or disproved. In July and September two members of assembly appeared in council and demanded, in "the name of the free people," why More had not been brought to trial. The council said in response, "that Nicholas More being at this time under a languishing condition, and not under promising hopes of a speedy recovery," it could not at that time give a definite answer. Again, in 1686, the speaker of the assembly in the name of that body desired to know why the impeachment of More was suspended. The president of the council replied, "that after the promulgated bills were duly considered and finished, which he did conceive was first the most proper work for the assembly, the business of the impeachment should succeed." Thus by one excuse or another was the trial of More postponed by the council, until it was finally lost sight of amid later quarrels.

After the assembly had expelled More, it sent the following letter to the proprietor: "We the freemen of the province * * * do with unfeigned love to your person and government" declare, * * * "dear and honored sir, the honor of God, the love of your person and preservation of the peace and welfare of the government were, we hope, the only centre to which our actions did tend. * * *" After denouncing More in unmeasured terms it proceeded, "Yet to you, dear sir, and to the happy success of your affairs, our hearts are open and our hands ready at all times to subscribe ourselves * * * your obedient and faithful freemen. We know your wisdom and goodness will make a candid construction of all our actions, and that it shall be out of the power of malicious tongues to separate betwixt our governor and his freemen,

¹ *Col. Rec.*, i, pp. 181, 191.

who extremely long for your presence and speedy arrival of your person.”¹ But the proprietor had doubtless heard so many conflicting stories² about the disagreements, that he returned no direct answer³ to this letter. But he wrote to James Harrison and others, “I am sorry at heart for your animosities; cannot more friendly * * * courses be taken to set matters to right? * * * For the love of God, me, and the poor country, be not so governmentish, so noisy, and open in your dissatisfactions.”⁴

It will be recalled that, in addition to the proceedings concerning More, the attempt of the council to promulgate bills in an unconstitutional manner had disturbed the relations between it and the assembly. Unmindful of the protest of the former assembly, the council again in 1686 promulgated the bills for the ensuing session in the name of the “president and freemen in provincial council met.” As soon as the assembly learned of this action, it charged the council with having knowingly and wilfully violated the charter. After the failure of repeated attempts of its committees to secure a general conference with the council, and there being every probability of a long controversy concerning the respective rights and privileges of the two bodies, the assembly, May 18, resolved to adjourn. Among the bills proposed by the council was one prolonging the existence of a number of laws. Immediate action was imperative, lest by the adjournment of the assembly these laws might lose their force. Hence the council declared that, in view of the great trust reposed in it by the charter and the proprietor’s commission, and in consideration of the fact that nothing should be permitted to subvert the government, if the assembly refused to pass the bill for the continuance of these

¹ *Votes*, i, pt. i, pp. 35-36.

² “For private letters, though from public persons, I regard them but little. * * * I find such contradictions as well as diversity, that I believe I may say that I am one of the unhappiest proprietaries with one of the best people.” Proud, *Hist. of Pa.*, i., p. 333.

³ *Ibid.*, p. 299.

⁴ *Ibid.*, p. 297.

laws, no more bills should be read to it by the clerk of the council. "The preservation of the government in the form wherein it is at present," said the council, "is more expressly our respective duties than exposing the same by dubious and insecure methods to unavoidable mischief."¹ The assembly then demanded that certain amendments should be inserted in the bill. To this the council would not accede. Then the two bodies entered into a conference and discussed their respective privileges, but without coming to any understanding. At length it was unanimously agreed that, since the return of the proprietor was daily expected, further proceedings in the matter should be dropped.² Penn, however, was still unable to leave England. Again he wrote to Harrison, September 23, 1686, "There is nothing my soul breathes more for in this world next my dear family's life than that I may see poor Pennsylvania again; but I cannot force my way hence, and see nothing done on that side inviting us * * * not that I will not come whatever they do there, but not the sooner to be sure."³ The following month he begged Harrison to "speak to those disquieted in the government to be still and discreet" till he came.⁴ In November he sent another letter of a similar tenor, deploring the existence of the disagreement and beseeching that, for his own and the country's good, a stop should be put to it.⁵ On still another occasion he wrote, "Let all old sores be forgotten as well as forgiven * * * and preach this doctrine to the people in my name, yea in the king's name * * * and God Almighty's name. * * * Remember me to the people, and let them know my heart's desire toward them; and shall embrace the first opportunity to make my abode with them."⁶

At last his patience became somewhat exhausted. "I am

¹ *Col. Rec.*, i, p. 183.

² *Ibid.*, p. 184; *Votes*, i, pt. i, p. 39.

³ Penn MSS., *Domestic Letters*.

⁴ *Ibid.*

⁵ *Ibid.*

⁶ Passages from the Life of William Penn, pp. 326-7. Proud, *Hist. of Pa.*, i, p. 334.

grieved at the bottom of my heart," wrote he to Lloyd and Harrison,¹ early in 1687, "for the heats and disorders among the people. * * * For my coming over to Pennsylvania cheer up the people. * * * I am sorry that my letters to the council are so slightly regarded. * * * In future I will make proclamations under hand and seal, and by other methods govern myself for the future. I have with a religious mind consecrated my pains in a prudent frame, but I see it is not valued or kept, so that the charter is over and over again forfeited. Nay, I hear my name is really not mentioned in public acts of state, nor the king's, which is of dangerous consequence to the persons and things they have transacted, since they have no power but what is derived from me, as mine is from the king. * * * I will keep the powers and privileges I have left, and recover the rest as their misbehaviors shall forfeit them back into my hands, for it is yet in my power to make them need me." At the same time he directed Lloyd to have all the laws repealed, and then to see that what were needed should be re-enacted in proper form. When the council read this note of censure it gave up its intention to propose to the assembly new matters for legislation, and set about devising some plan by which the laws already passed might be better understood and more effectually executed. The orders of the proprietor were seriously discussed. At length it was agreed that the existing laws should continue in force, "without annulling, variation or supplying additional bills," until Penn should arrive or until the next council should be elected.²

We have already noticed that contradictory reports of the state of affairs in the province were sent to the proprietor. The knowledge he thus obtained of the disorders existing there must have convinced him that his experiment of entrusting the executive functions of government to the entire council

¹ Penn MSS., *Domestic Letters*; Passages from the Life of William Penn, pp. 322-4.

² *Col. Rec.* i, p. 198.

was unsuccessful. Hence, February 1, 1687, three days after his last letter of reproof and menace, he appointed five commissioners of state.¹ That the proprietor was now thoroughly in earnest may be seen from the character of the instructions he gave the commissioners. They were as follows: "Trusty and well-beloved, I heartily salute you; lest any should scruple the termination of President Lloyd's commission with his place in the provincial council, and to the end that there may be a more constant residence of the honorary and governing part of the government, for the keeping of all things in good order, I have sent a fresh commission of deputation to you, making any three of you a quorum to act in the execution of laws, enacting, disannulling or varying of laws, as if I myself were there present, reserving to myself the confirmation of what is done, and my peculiar royalties and advantages.

"*First.* You are to oblige the provincial council to their charter attendance, or to take such a council as you think convenient to advise and assist you in the business of the public; for I will no more endure their most slothful and dishonorable attendance, but dissolve the frame without any more ado.² Let them look to it, if further occasion be given.

"*Secondly.* That you keep to the dignity of your station in council and out, but especially to suffer no disorder in the council, nor the council and assembly or either of them to entrench upon the powers and privileges remaining yet in me.

"*Thirdly.* That you admit not any parleys or open confer-

¹ "I have constituted you or any three of you governor, and so are properly the commissioners of the government, to act as if I were present, and I hope it will conduce to your honor, as the peace and happiness of the people under your care. I found my former deputation clogged with a long and slow tale of persons rarely got together, and then with unwillingness and sometimes reflections even upon me." Proud, *Hist. of Pa.*, i, p. 307.

² Benjamin Franklin (*Works* iii, p. 128) says that Penn "enjoined and required his commissioners to dissolve the frame of government, but that they were unable to carry the point." When compared with the actual words of the instruction, the incorrectness of this statement is apparent.

ences between the provincial council and assembly; but one with your approbation propose, and let the other consent or dissent according to charter.

"Fourthly. That you curiously inspect the past proceedings of both, and let me know in what they have broken the bounds or obligations of their charter.

"Fifthly. That you this very next assembly general declare my abrogation of all that has been done since my absence, and so of all the laws but the fundamentals; and that you immediately dismiss the assembly, and call it again, and pass such of them afresh with such alterations as you and they shall see meet.

"Sixthly. Inspect the qualification of members in council and assembly; see that they be according to charter, and especially of those who have the administration of justice, and, whatever you do, let the points of the laws be turned against impiety, and your severe brow upon all the troublesome and vexatious. * * * Next to the preservation of virtue," finally urged the proprietor, "have a tender regard to peace and my privileges, in which enact from time to time. Love, forgive, help, and serve one another, and let the people learn by your example, as well as by your power, the happy life of concord."

Among the commissioners appointed were James Claypoole and Nicholas More. But for some reason they never acted. The council continued to transact business under the old system until February, 1688, when their places were supplied by new appointments.² The assembly met the following May. But it neglected to present the speaker to the governor, (*i. e.*, the commissioners of state) and council for approval as custom required. It also resolved that none of its proceedings should be made known. The council took offence at this act on the part of the assembly, and so informed the first committee of that body with which it held conference, plainly intimating through it to the assembly, that the speaker should have been

¹ Proud, *Hist. of Pa.*, i, pp. 305-7.

² *Col. Rec.*, i, p. 212.

presented to the governor and council for their approval. The council further informed the assembly that it had no power to appoint a committee, and that in future its committees would not receive any recognition. It said that the present business of the assembly was only to consider certain promulgated bills, but that, if any other course was adopted, immediate dissolution would follow. "The assembly keeping themselves so private and shutting their doors," the governor and council thought, was "some new prerogative power assumed to themselves."¹ The misunderstanding thus begun between the two legislative bodies, continued till the close of the session. The assembly declared that, if money had been voted for public purposes, the payment of that money was just as binding on the government, as if a bill to that effect had been formally prepared by the council, and assented to by the assembly.² Here again appears the desire of the assembly to possess legislative powers equal to those of the council. To this declaration the council made no reply, but it told the assembly that it was willing to arrange a conference "to remove all hard thoughts."³ Then the assembly requested redress of several grievances. But although the council made some smooth promises, the assembly could obtain conference only at the council's pleasure, and under its prescribed rules. Of the seven bills promulgated by the council, five by the concurrence of the assembly were passed into laws. The council tried to force the passage of the two remaining bills by withholding its approval from the five just returned, thereby threatening to detain the assembly in prolonged session. But the assembly stood firm in its determination not to yield, particularly to the bill for raising money as offered by the council. At length, May 19, the council was forced to allow an adjournment of the assembly. But in spite of the many unpleasant occur-

¹ *Votes*, i, pt. i, p. 44; *Col. Rec.*, i, p. 223.

² *Col. Rec.*, i, p. 226.

³ *Votes*, i, pt. i, p. 46.

rences of the session, the assembly drew up a paper and presented it to the governor and council "as a thankful acknowledgment of their kindness."¹ Papers of this kind, if intended to show the proprietor how amicable were the relations between the constituent parts of the legislature, utterly failed of their purpose.

Penn had tried the experiment of entrusting the government to the people themselves, and to leaders chosen from among them. He now determined to place in command an entire stranger, who, not being a party to the disputes, would probably act impartially in quelling them. Hence on September 25, 1688, he appointed as governor a "a grave, sober, wise man," one Captain John Blackwell, formerly an officer in Cromwell's army. His motive in making the appointment and his opinion of the claim of the assembly that it might have equal powers with the council in legislation, may be seen in the following letter written to a friend in the province a week before the commission was granted: "I salute you with that love with which I have ever loved you, * * * and I hope your regard and affection is the same to me and the prosperity of my poor family, for it would be no little sorrow to me to hear anything of time or distance having weakened your zeal and love towards me and mine. * * * My prayers are most fervently with a bowed soul poured out to God, that He would clear and help my way towards you with whom I should rejoice to live and die, * * wherefore, dear friends, let not your heart fail, nor your love decay, but let your care be that the poor province be not prejudiced any way by my absence. * * * I have ordered him (the governor) * * * to bear down with a visible authority vice and faction, * * * and if he do not please you he shall be laid aside. * * * The assembly as they call themselves is not so without governor and provincial council. * * * The people have their representatives in provincial council to prepare, and the assembly as it is called has

¹ *Votes*, i, pt. i, p. 47.

only the power of aye or no, yea or nay. If they turn debaters or judges or complainers, you overthrow the charter quite in the very root of the constitution of it, for that is to usurp the provincial council's part in the charter, and to forfeit the charter itself; here would be two assemblies and two representatives, whereas they are but one to two works, one prepares and proposes, the other assents or denies. The negative voice is by that in them, and that is not a debating, mending, altering, but an accepting power."¹

In December the governor arrived in Pennsylvania. Soon after, he called a meeting of the council, and proceeded at once to reorganize the government. Steps were taken to enforce regular attendance on the part of councillors, and the times when sessions of council should be held were fixed. But at the outset he encountered bitter opposition from Thomas Lloyd, the chief commissioner of state and keeper of the great seal, who, as his actions showed, was not well pleased at being superseded in authority, especially since the appointee was not a Quaker. Blackwell requested him to affix the great seal of the province to certain commissions he had caused to be prepared. Lloyd refused to do so, and sent a very insulting note to the governor. Blackwell sharply censured him for this, and declared his intention to transmit an account of the affair to the proprietor.² Ere long the governor came into conflict with the council. Failing to induce it to support him in enforcing the laws of trade, he called its attention to the fact that, contrary to the trust reposed in it, laws had been passed which were injurious to the interest of the proprietor. Several members of the council immediately took exception to this statement, and when Blackwell ordered one of them to leave the council room, he refused, saying that he had been sent by the people, and could not be put out by any deputy governor.³ Quarrels such as this with

¹ Hazard, *Register of Pa.*, iv, p. 105.

² *Col. Rec.*, i, pp. 232, 236, 238.

³ *Ibid.*, p. 244.

members of council were frequent during the whole of Blackwell's short administration, he endeavoring, at times rather arbitrarily, to assert his authority, they jealous of his position, and devising every means, even to slander and open insult, to oust him from it.¹ Among the subjects of controversy was one concerning the use of the ballot in elections. The governor was of course unwilling to allow its use in the council, as he feared adverse "clandestine decisions." But when the freemen of Philadelphia county refused to make use of it in the election of a certain councillor, Blackwell declared that the frame of government distinctly provided for the employment of the ballot in all elections. But in spite of his opposition, the council voted to admit the councillor in question. Thus was one of Penn's cherished ideas cast aside.² With the assembly Blackwell succeeded no better.³ It entertained no kindly feeling for him, owing to the arrest by his orders and the prolonged imprisonment of one of its members. No bills had been prepared for its consideration, and the prospect for the accomplishment of any legislative work was very gloomy.

At length, in May, 1689, a conference between the council and the assembly was arranged. Here the governor delivered a somewhat lengthy address.⁴ After giving a defense of his proceedings, he stated the reasons why no laws had been prepared. In the first place, he had been ordered by the proprietor to obey the instructions issued to the commissioners of state concerning the repeal of all existing laws, with the exceptions therein noted. Secondly, the royal charter required that all laws should for their validity be passed under the great seal. But upon examination it had been ascertained that none of the

¹ *Col. Rec.*, i, pp. 245, 250, 253, 269-282.

² *Ibid.*, pp. 282-284.

³ Benjamin Franklin (*Works* iii, p. 134) says that several members of the assembly were induced by the governor to refuse to give their attendance. There is absolutely no proof of this. In fact, the conduct of the assembly was marked chiefly by bitterness, disunion, and hasty proceedings. *Votes*, i, pt. i, pp. 48-56.

⁴ *Col. Rec.*, i, pp. 286-289.

engrossed laws, except the frame of government and the act of union with the Lower Counties, had been passed under the great seal. This discovery had led to a serious consideration in council of the question whether the laws, not having been passed as the royal charter directed, were actually valid, but no decision had been reached. The governor for his own part believed that this technicality seriously affected their validity, but he declared that, when he endeavored to obtain the great seal, the keeper had refused to allow the use of it. Thirdly, the uncertainty as to the continuance of the government in the hands of the proprietor rendered a cautious policy in enacting new laws an absolute necessity. He adverted to the dissensions which prevailed when he became governor, and that they had been revived in the council. As he had failed to restore harmony in that body and as some of its members appeared to be bound to oppose him, he had dismissed it from service. In view of the situation Blackwell suggested this expedient. By the terms of his commission he had been "referred for his rule and instruction" to the laws passed prior to Penn's departure for England. The proprietor had moreover reserved the final confirmation of all laws passed during his absence, "so that, if any were or should be proposed, they could not take effect * * * as laws till his pleasure therein should be declared." Hence, Blackwell thought it a good plan to consider the existing laws, so far as he did not find them contrary to the laws of England, as so many rules or instructions from the proprietor. Any defects, however, that he might discover in them should be remedied by the laws of England. "This," said he, "will be most grateful to our superiors in England, especially at this time, and will be as useful among ourselves, there being no other way * * * whereby you may receive the benefit of them. In this purpose," he continued, "I remain ready, unless you should otherwise advise, until by better information out of England we shall be led out of these state-meanders." The reply of the speaker of the assembly was in part as follows: "We can-

not but have that opinion of our worthy governor's tender regard to the people here that, as he will justify no unbecoming behavior in us toward his representatives, so we hope he will vindicate no unlawful or rigid procedure against us. As to our governor's absence, we are very sensible that, as it may be to his disappointment, so it is extremely to our prejudice." The speaker also told the governor that, as the frame of government made no provision therefor, the use of the seal was unnecessary to render valid any law. He called attention to this fact which the governor had mentioned, viz., that the proprietor had not insisted that the seal should be affixed to every enactment, and added, "we do conceive that our laws here not being declared or adjudged by the king under his privy seal to be void, do remain and stand in full force." As to the governor's suggestion to administer the government according to the laws passed prior to 1685, the speaker said "we conceive no such expedient can be consistent with our constitution without the concurrence of the council, according to such methods as have been heretofore used * * *, and what course of government is otherwise will be ungrateful and uncertain to us, for how far the laws of England are to be our rules is declared by the king's letters patent."¹ Then the assembly requested that three members of council who had been duly elected, but whom the governor on account of their behavior toward him refused to allow in the council, should be permitted to take their seats. Blackwell replied that the assembly could not be a judge of the qualifications of the members of council, particularly when one of them, Thomas Lloyd, was charged by him with high crimes and misdemeanors. The assembly rejoined that this was not what William Penn had promised, and that the liberties of Englishmen would be maintained at all hazards. The governor bade it take back its papers of complaint, for "he would not countenance actions that tended to subvert the government and turn everything to

¹ *Votes*, i, pt. i, p. 53.

confusion." He expressed also his firm resolution to execute the duties of his office. A member of the council advised the assembly to defy the governor, and a whispered conversation among the malcontents was held. A paper was handed round. Blackwell had heard that Lloyd and other councillors had been devising a scheme to harass him, hence he was unwilling to allow the paper to be read aloud. Suddenly the three members of the council, headed by Lloyd, forced their way into the council room, and, in spite of the governor's protest, seated themselves. Lloyd insolently remarked that he had the proprietor's letters "making him a councillor, which was as good as the governor's commission."

A disgraceful scene of confusion followed, a few of the council siding with the governor, but the majority rejoicing over his discomfiture. Blackwell arose and left the room amid angry clamors, particularly from Lloyd, which were heard in the street.¹ But in order to prevent the total lapse of all the laws and the unfortunate results that might follow such a catastrophe, the governor at length agreed with the council to issue a declaration with regard to them. It was stated that, notwithstanding insinuations to the contrary, the governor and council had had no intention to subvert the frame of government, or to annul the laws, but would have joined with the assembly, if that body had seen fit so to do, in enacting a law to confirm their present constitution. Inasmuch as the passage of such a law had been "obstructed or omitted," the governor and council therefore declared that all the laws made before the return of the proprietor to England should continue in force until more definite intelligence from abroad should be received.²

The result of all these contentions and misunderstandings was, that the people began to entertain prejudices against the proprietor. It cannot be denied that Penn was somewhat unsteady in his principles of government, as well as in his methods

¹ *Col. Rec.*, i, pp. 292-294.

² *Ibid.*, pp. 295-297.

of carrying them out. The chief cause may be traced to the conditions incident to a newly established colony, the government of which rested on partly untried principles, and the inhabitants of which enjoyed a degree of liberty not granted to its immediate neighbors.

Blackwell's administration lasted only thirteen months. The disorders were of so grave a character that the proprietor was convinced that the continuance of him in the governorship would be productive of further trouble, and, at his own request, agreed to release him from his unpleasant position. About the same time he told Blackwell to cease the prosecution of Lloyd, "to be as little rigorous as possible," and to induce several members of council to dispose the unruly to "that complying temper¹ that may tend to that loving and serious accord that become such a government." In a letter to the secretary of the province, dated April 13, 1689, Penn ordered him to represent to the governor and council, "the invasion and oppression of those that except against any man being chosen a member of council or assembly" who was in the proprietor's interest. "Is my interest," asked he, "already rendered so opposite to the country's, and I and those employed by me become such ill men, that it is impossible they can serve the country and me together? I could say much against the impolicy and impiety of such suggestions."² Upon quitting his seat, however, the governor left with the council the forms of two commissions for settling the government, which had been sent by the proprietor with instructions to the council that it should choose which they would have, as either would satisfy him. "Since the providence of God," said he, "hath disappointed my real intentions and earnest inclinations of coming to you for some time longer, and to the end the inhabitants thereof may be assured I have and seek no other interest than what is agreeable with theirs," he empowered the council to choose three persons, one of whom

¹ *Col. Rec.*, i, p. 319.

² *Ibid.*

he would appoint deputy governor, but in the meantime any person they might nominate might serve in the position. If this arrangement should not be agreeable, the whole council might act as deputy governor, similar to the form in which it had been appointed so to act when the proprietor left the province. With these commissions Penn sent a letter, in which he said that, in order to show his confidence in the members of council, and to make them contented, he had placed everything in their hands. He begged them to be more regular in their attendance, to be diligent in the pursuit of peace and virtue, and to maintain authority with respect. If they chose to nominate a deputy governor, provision for a "comfortable subsistence" must be made, so that the "government might not go a-begging." He cautioned them that what he had done was merely to show his regard for the people, and was not to be construed as a precedent binding in all cases. "Whatever you do," said he, "I desire, beseech, and charge you to avoid factions and parties, whisperings and reportings, and all animosities,¹ that putting your common shoulder to the public work, you may have the reward of good men and patriots."² The council without much hesitation adopted unanimously the commission that authorized the council to act as deputy governor, and immediately elected Thomas Lloyd president.

We have now arrived at a period in the history of the province when the records of the proceedings of both council and assembly have in part either been suppressed or accidentally

¹ "With my true love to thee and thine and all honest friends by this know that none of my exercises here have come so near me as the jumbles you have there. I cannot declare the trouble they have given me, but * * * I hope I have taken the best course I could to quiet things among you. The Lord God almighty give them a sense of it that have been the occasion that have sacrificed the quiet and honor of the province to their particular humors, wherever it lights, and guide you all in the path of humility, meekness, and righteousness." Hazard, *Register of Pa.*, iv, p. 135, William Penn to Robert Turner, Oct. 4, 1689.

² *Col. Rec.*, i, pp. 312-316.

destroyed. The province and the Lower Counties entered upon a controversy over privileges. While this was in progress, a religious quarrel broke out. The Quaker preacher, George Keith, who appears to have been fond of contention, began to advocate certain views. One of them was, that a Quaker magistrate could not conscientiously use force in the execution of law. He commented severely on orthodox Quakers, sharply inveighed against Penn himself,¹ and denounced in unqualified and scurrilous terms all who did not accept his peculiar notions. When fined for libel, he bitterly complained that he had been persecuted. Finally, his preaching caused a schism in the society, and his followers formed a separate organization, known as the Christian Quakers. The angry feelings aroused by the quarrel continued for several years,² and the disturbances which resulted from it, threatened to undermine the government. In the beginning of 1692 the proprietor forwarded a commission to Thomas Lloyd to be governor of the province. But the disagreement among the Quakers, the conflict between the province and the Lower Counties, and the renewal of the quarrels between the council and the assembly not only prevented legislation, but kept the affairs of government in a chaotic state. As an Indian chief expressed it, "When the Quakers governed, sometimes one man and sometimes another pretended to be governor."³

Statements concerning these disputes came to the knowl-

¹ Penn was opposed to the contentions of Keith. *Mem. Pa. Hist. Soc.*, iv, pt. i, p. 201.

² In 1693 Keith presented to Lieut. Gov. Markham and the council a petition stating "that he had been aspersed by some in the government as having behaved offensively." In a letter to him from Thomas Lloyd and others he was called "turbulent, crazy, a decier of magistracy, and a notorious evil instrument in church and state." As Markham and a majority of his council were not Quakers, they were probably very willing to affront Thomas Lloyd and his party, and therefore granted Keith a certificate of good behavior. *Col. Rec.*, i, pp. 366, 378. See Hazard, *Register of Pa.*, ii, pp. 55-6.

³ *Ibid.*, pp. 372-3.

edge of the English government. It now seized the opportunity to take a step that it probably had for some time contemplated. On October 20, 1692, Benjamin Fletcher, governor of New York, was appointed by King William and Queen Mary governor of Pennsylvania as well. The ostensible reasons why Penn was deprived of his government may be summed up as follows: First, that the province "owing to great neglects and miscarriages in its government had fallen into disorder and confusion." Second, that, in consequence of this misgovernment, the public peace and the administration of justice had been broken and violated. Third, that, as no provision for the defence of Pennsylvania against its enemies had been made, there was danger that not only this province, but those adjoining, would be captured by the French. But the true cause of this action of the king and queen is undoubtedly to be found in a dislike for Penn, occasioned by his intimate friendship with James II., and increased by the misrepresentations of the proprietor's enemies, who accused him among other things of being a Jesuit. Penn of course was unable to ward off this blow. He was not only under the ban of the court, but was helplessly involved in his financial troubles. Still, two months after Fletcher had been appointed, the proprietor warned him to be careful how he dealt with what was rightfully the property of another. As no writ of *quo warranto* had been brought against the royal charter, Penn attributed Fletcher's commission to some misinformation given to the Board of Trade, and to an "excess of care over the colonies."¹ At the same time he wrote to some friends in Philadelphia, bidding them "to insist upon their patent with wisdom and moderation," though not to the extent of openly disobeying the orders of the crown. He asked them further to show how improbable it was that the French would make their way through Pennsylvania into the other colonies. He requested them to bear in mind the fact that

¹ *N. Y. Col. Doc.*, iv, p. 33.

the government, not the possession of land, was the motive that prompted the Quakers to leave England, and "that they were a people who * * * did not go to Pennsylvania on account of guilt or poverty." Any protest against the governor acting by virtue of his arbitrary commission, and setting forth the dangers incident thereto, Penn declared would be submitted to the proper authorities.¹

In the appointment of Fletcher the rights of the proprietor were utterly disregarded, while his commission authorized him to govern both New York and Pennsylvania under the same plan of government, with equal powers and prerogatives in both provinces. Among the powers enumerated were those to appoint a council and to call a general assembly. In April, 1693, Fletcher arrived in Philadelphia. His first act was to send for the late governor, Thomas Lloyd, and to offer him the first place in the council. Upon his refusal to accept it,² the governor appointed William Markham, and the following day that officer was chosen lieutenant governor. To the members of the council Fletcher announced the necessity for the early meeting of an assembly, and asked their opinion and advice concerning the number of representatives to be returned from each county. At first they deprecated any change in the number, which it will be remembered was six from each county. But their objections were soon overcome, and, April 27, writs were issued for the election of four persons from Philadelphia county, four from Newcastle county, and three from each of the others.³ Against this method of electing the assembly seven members of Lloyd's council presented to the governor a written protest. "We earnestly desire," said they, "that no other method may be taken for electing or convening our legislative power than the received laws of this province do prescribe." This address the governor and council decided to be too general in character to

¹ *N. Y. Col. Doc.*, iv, p. 34.

² *Ibid.*, p. 35.

³ *Col. Rec.*, i, p. 366.

deserve any answer.¹ When the assembly met, Fletcher ordered the clerk of the council to read their majesties' commission. This he did because several persons commissioned by the proprietor had refused to serve under the new governor, and because many of the representatives were absent at the time.² The proprietary party in the assembly was unwilling to believe that Penn's government had been superseded. Accordingly the assembly sent Fletcher the following address: "Since it hath pleased the king and queen that the absence of the proprietary's personal attendance in this government should be supplied by thee or by thy lieutenant, we * * * do readily acquiesce with the king's pleasure therein, earnestly beseeching that our procedure in legislation may be according to the usual method and laws of this government, * * * which we humbly conceive to be yet in force, and therefore we desire the same may be confirmed unto us as our rights and liberties."³ The governor bluntly replied that the supposition that the laws of the province were still in force was a mistaken one. If they were in force, he questioned the need of any confirmation of them. He declared that the present constitution was in direct conflict with his commission. He pointed out that, by the frame of government, the tenure of the council was elective, whereas in the provinces immediately subject to the king, its tenure was appointive. He also called attention to the fact that the assembly had hitherto enjoyed the right of accepting or rejecting laws, whereas now the sole veto power was vested in himself as the representative of the crown. He insisted further that many of the laws were contrary to those of England. He even declared that the powers granted by Charles II. to the proprietor were available only during the life of that monarch. "These laws and that model of government," said he, "is dissolved and at an end: you must not halt between two opinions. The king's power and Mr. Penn's must not come in the scales together." After a brief consulta-

¹ *Col. Rec.*, i, p. 370.

² *Ibid.*, 371, 375, 377.

³ *Ibid.*, pp. 402.

tion with the council, the governor also informed the assembly that the absence of the proprietor was "the least cause mentioned in their majesties' letters-patent for their majesties' asserting their undoubted right of governing of their subjects in this province. * * * The constitution of their majesties' government and that of Mr. Penn's," said Fletcher, "are in a direct opposition, the one to the other. If you be tenacious in sticking for this, it is a plain demonstration * * * that indeed you decline the other. I shall readily concur with you in doing anything that may conduce to your safety, prosperity and satisfaction, provided your requests are consistent with the laws of England, their majesties' letters-patent and the trust and confidence their majesties have reposed in me." This reply was accompanied with a rather pointed intimation that he would not brook further dilatory action, and that he desired the assembly to decide at once whether it would acknowledge the royal commission, or would still persist in demanding a recognition of the frame of government. Upon receipt of this communication the assembly resolved that it would be safe to act with the governor in legislation, but it declared that its decision should not be construed into a forfeiture of the right to the privileges contained in the frame of government and in the laws, so far as they were not inconsistent with the governor's commission.¹

The assembly then entered upon the preparation of bills—a privilege it had long sought. After several days of tedious examination of the existing laws, a bill styled a "petition of right," and consisting of the titles only of upwards of ninety laws, in accordance with which the assembly requested him to govern, was presented to the governor. On account of the fact that only the titles of laws were given, Fletcher refused to consider the bill. After considerable difficulty the assembly secured copies of the laws. These again Fletcher refused to consider, because they had not been certified or passed under

¹ *Col. Rec.*, i, pp. 402-405.

the great seal. This second refusal of the governor placed the assembly in a peculiar position. It must induce the governor to confirm the laws, or, by a re-enactment of them seem to intimate that they had never been in force. It therefore insisted that none of the laws transmitted to England had been declared void by the king in council. It urged also that the clause of the royal commission authorizing the governor to act in accordance with "such reasonable laws and statutes" as were then in force in the province, recognized fully the existence and validity of those laws. Fletcher replied that he was informed on good authority, that none of the laws had ever been sent to the king. The fact also that they had never been duly enrolled, would serve to verify this statement. He then offered to allow the matter to be left to the decision of a joint committee of council and assembly. After a long and interesting debate, in which was discussed the status of the laws, particularly with reference to their alleged transmission to England, and the necessity of having them formally sealed and enrolled,¹ the joint committee adjourned with the understanding that the assembly should revise its list of laws before again desiring the governor's consideration of them. After some further controversy Fletcher agreed, June 1, to pass into a law the "petition of right," which in its amended form embodied eighty-six laws. At the same time he ordered the law to be put into execution, "until their majesties' pleasure should be further known."² In the afternoon the governor sent for the assembly and desired to know whether it wished to be adjourned, prorogued, or dissolved. A dissolution was requested, and with the request Fletcher complied.³ In his transactions with the assembly the following year, it may be said, he met with so much opposition that only six unimportant bills were passed.

¹ *Col. Rec.*, i, pp. 418-422.

² *Charter and Laws of Pa.*, pp. 188-220.

³ *Col. Rec.*, i, p. 433.

The affairs of the proprietor in England now began to assume a more favorable aspect. The charges against him were disproved, and at length by letters-patent, dated August 20, 1694, the king and queen restored him to his government, but only on the understanding that in future he would take greater care of it. Three months later he appointed Markham governor, but directed that all his official acts should be subject to the advice and consent of two assistants. The governor, shortly after the receipt of his commission, which was in March 1695, ordered writs to be issued for the election of a council, the number of which should be the same as that required by the frame of government. It met for the first time on May 20. "Humble and hearty" thanks were voted to the crown for restoring the government to William Penn;¹ and soon after, a grand committee consisting of all the members of council was constituted for the purpose of revising the laws of the province, in order to repeal those which could not properly be continued, and to prepare new ones. But since doubt had arisen as to whether the appointment of Fletcher had not affected the validity of the frame of government of 1683, the majority of the council and later of the assembly took the view that a legislative act was necessary to re-establish its validity. Hence the grand committee of council presented to the governor a bill "relating to the new modelling the government." During the sessions of two days the bill was discussed, but without any agreement. Markham thought that the frame of government had been temporarily superseded by the administration of Fletcher, and that, when the government was restored to the proprietor, the frame immediately went into force again. For this reason he refused, without advice from the proprietor, to pass any act to confirm it.² Then he ordered the proposed bill to be laid aside, and appointed a committee of six, one from each county, to prepare "a new frame and model of government, that should not be construed

¹ *Col. Rec.*, i, p. 484.

² *Ibid.*, p. 505.

as a confirmation of the old frame." But this select committee in preparing a frame of government met with no better success than did its predecessors, and was compelled at last to report that it had failed to come to any agreement. The governor then told the council that, in attempting to lay aside the charter granted by the proprietor, which had been so thankfully accepted, and in trying to "make a more easy frame," much valuable time had been consumed to no purpose.¹ Ere long it was found needful to summon an assembly, consisting of thirty-six members, the number required by the frame of government. The governor immediately called attention to the fact that the custom enjoined by the frame, that the council should propose and the assembly accept or reject bills, had lately fallen into disuse. He himself, however, was much opposed to making any change in the frame without the consent of the proprietor. Meanwhile, the council had prepared no bills for the consideration of the assembly. Hence, a grand committee of the two bodies obviated this omission of a constitutional requirement, by deciding that, in the present emergency, "it might be lawful to proceed to legislation without the promulgation of bills." It was also agreed that, as both bodies were created by the people, bills might be prepared and proposed by the assembly as well as by the council. In regard to an act of settlement that had been suggested, the governor was requested to, and accordingly did, appoint from both houses, a joint committee of twenty-four. Markham's objections to its report resulted in the creation of another grand committee of all the representatives, who were instructed to draw up another act of settlement. To the report of this also the governor was strongly opposed. Several representatives urged that the act of settlement, as it then was, contained nothing more than had previously been granted by Penn himself. Markham replied that their purpose seemed to be to force him to yield to the passage of this "charter of privileges," otherwise another

¹ *Col. Rec.*, i, pp. 485-6.

measure of importance would not be carried out. Furthermore, in justice to the proprietor he felt that he could not pass it. At last, seeing that a change of sentiment on the part of the representatives was highly improbable, on September 27, he dissolved both the council and the assembly.¹

This arbitrary dissolution of the general assembly of 1695 was looked upon by the representatives with surprise and dismay. They insisted "that where mention was made of any difficulty or inconvenience in resuming the charter, it was but in circumstantial, and had respect only to the time of meeting, the number of members, and the like," and that they did not believe the charter had in any way been forfeited or lost. But Markham saw fit to construe their action into an expression of dissatisfaction with the manner in which he had attempted to restore the proprietary government. The clause in his commission authorizing him to govern the province "according to the known laws and usages thereof," he had interpreted to refer to enactments prior to 1693. Now he concluded to act upon a different interpretation. Discarding entirely the frame of government of 1683, he assumed the methods of government adopted by Fletcher. Contrary to the advice of one of his assistants, who in consequence resigned his position,² no writs for choosing members of council and assembly were issued at the time appointed by the frame, and every effort was made by the governor to dissuade the people from holding the election.³ Thereupon he appointed a council of the same number of persons as was the custom in Fletcher's administration.

Urgent business in the shape of demands from Fletcher, based on orders from the crown for assistance in fortifying the frontiers of New York, necessitated calling an assembly. Accordingly writs were issued for the election of the same number of representatives as were chosen in the former administration. The assembly met, October 26, 1696, and sent the governor an earn-

¹ *Col. Rec.*, i, pp. 488, 489, 491, 493-495.

² *Ibid.*, p. 498.

³ Proud, *Hist. of Pa.*, i, p. 414.

est remonstrance against his dissolution of the former assembly, and his appointment of the council.¹ Failing to obtain a satisfactory answer to its protest, the assembly kept Markham in suspense as to its answer to his instructions from Fletcher. At length the governor's patience became exhausted, and, with the consent of the council, he called the assembly to a conference with him, and spoke as follows: "Mr. Speaker, and you gentlemen of the assembly, are a very silent and close assembly, which I believe proceeds from some jealousies you may have that I intend to take away your charter. Mr. Goodson relinquished his assistanceship to me that Arthur Cook might take it up, by presenting me a commission from the proprietor to me which he had kept hid from me these eighteen months past, and which authorized me to act according to law and charter, and by another to Samuel Jennings and Arthur Cook to be my assistants, which they also kept hid from me the like time." After referring to the fact that he had always believed the frame of government was in force, but that the representatives had thought differently, for which reason he deemed himself fully empowered to dissolve the sessions of council and assembly, the governor continued: "Gentlemen, no man ever heard me say that the charter was void, and no man stood more for the defence of it than myself. And had that commission which Mr. Cook now presents to me from the proprietor, which authorizes me to act by law and charter, been the first presented to me, I could not even by it have acted more charterally than I did by that by which I then and now act, which authorizes me to act according to the laws and usages. Since you say that the charter cannot be put into act and motion without a legislative authority, if I had power or instructions from the proprietor to do it I would most willingly. * * * If there be anything you would have me do that may secure any right or claim you have in law or equity to that charter, or any part of it, besides putting it in force without the proprietor, I'll offer that noth-

¹ Proud, *Hist. of Pa.*, i, pp. 413-14.

ing you do this session shall be in any manner of way prejudicial to your claim or right to the same. It is above twelve months since I called an assembly, and indeed I was backward to call one, knowing how fond you were of the charter, hoping to have heard from the proprietor ; but now the emergencies being such that I could no longer delay the calling you, I have now called you according to the king's letters patent to Mr. Penn, and as near as I can according to the customs of the neighboring provinces."¹ In reply the assembly declared that, if the governor "would be pleased to settle them in their former constitution enjoyed by them before the government was committed to Gov. Fletcher's trust," it would immediately proceed to a consideration of the business on hand.² It concluded, however, to request Markham to appoint a committee of council which, with a similar committee of the house, might devise some expedient by which Fletcher's demands should be complied with, and at the same time the privileges of the people secured. To this request the governor readily acceded. The joint committee, after an exhaustive consideration of the subject, agreed that it was practicable to raise money in obedience to the orders from the crown, provided the governor were willing to pass an act of settlement, and so to construe its passage that it should not in the future work injury either to the rights of the people or of the proprietor, and provided further that the governor would agree to issue writs for the election of a full number of representatives in council and assembly. This proceeding should be subject, of course, to the approval or disapproval of the proprietor. Summoning the council and assembly to a joint meeting, the governor announced to them that he had considered the report of the committee, and had drawn up "some heads of a frame of government," containing certain amendments and alterations of the old charter, "which," said he, "I give you and desire you to consider * * * and draw up into a bill. Then I will consider whether to pass it

¹ *Col. Rec.*, i, p. 505.

² *Ibid.*, p. 506.

into an act or not." To evince its appreciation of the governor's spirit of concession, the assembly soon after presented to him not only the new act of settlement or frame of government, but also a bill for raising money to meet the demands of New York. When these had been passed, the governor declared the assembly dissolved.¹

Markham's frame of government made some important changes in the existing political system. The reason for their being made was declared to be the fact that the former frame was "not deemed in all respects suitably accommodated to present circumstances." Hence provision was made that two members of council and four members of assembly should be chosen from each county annually on March 10, and should meet in general assembly on May 10. The conditions of suffrage were specified. Affirmations in lieu of oaths should be allowed in all cases where the taking of the latter would involve an infringement of religious liberty. A stated compensation should be given to members of the council and assembly. Both the council and the assembly should have the power to propose bills, each for the consideration of the other, and copies of such bills as the governor passed, should be sent to the Privy Council as the royal charter commanded. To the assembly, further, was accorded the right of sitting on its own adjournments until dissolved by the governor and council, of appointing its own committees, of redressing grievances, and of impeaching criminals. The governor and council should also possess the right of summoning it at any time during the year. The governor or his deputy should preside in council, but was prohibited from performing any public act without its advice and consent. The act could not be altered or amended without the consent of the governor and six-sevenths of the freemen in council and assembly met, but the proprietor could at any time bring its existence to an end by expressing his will to that effect through an order under his hand and seal. Noth-

¹ *Col. Rec.*, i, pp. 507-509.

ing was said in the frame about the appointment of officers or the use of the ballot, but in conclusion it was provided that neither this nor any other act should preclude or debar the inhabitants of the province and of the Lower Counties from enjoying any of the privileges and immunities which the proprietor "did formerly grant, or which of right belong unto them, the said inhabitants, by virtue of any law, charter, or grants whatsoever, anything herein contained to the contrary notwithstanding."¹ Since a number of persons "expressed their dissatisfaction both with the proceedings and dissolution of the council and assembly in October 1696, insisting that their chartered rights were given away thereby, and that all the laws passed the last assembly were void * * * with such like objections that were made use of to obstruct the proceedings of the assembly, * * * and to bring the government into confusion," it was enacted in 1697 and 1698, that both Markham's frame of government and the laws passed in accordance therewith, should be legally binding in every respect.² As an illustration of political tendencies within the province, the importance of this document can scarcely be overestimated. It meant the complete recognition of the supremacy of the popular will.

Passing over the events of 1697, 1698 and 1699, as more properly to be narrated in another chapter, we may now consider the policy of the proprietor, after his return to the province, December 3, 1699. As soon as possible he began the work of reconstructing the government. "Many of the germs of jealousy, personal enmity, and hatred implanted during those years were now springing into life, destined shortly to

¹ *Charter and Laws of Pa.*, pp. 245-253.

² *Ibid.*, pp. 261, 268; *Col. Rec.*, i, p. 519. It appears that the members of the council and assembly elected from Philadelphia county, March 10, 1697, were firmly of the opinion that the charter of 1683 was still in force. There is some evidence, also, that the above law was passed by the efforts of Thomas Lloyd and his party who were bitterly opposed to the Philadelphia contingent, particularly the assemblymen. Penn MSS., *Ford vs. Penn.*

bear bitter fruit for the devoted proprietor to gather and garner with that of his earlier hopes."¹ It was firmly believed, however, by many of the Quakers who still cherished a regard for Penn, that he could quiet all differences that had arisen, and establish once more the reign of peace.² In fact Penn himself was positive that he could "compose all by mildness and moderation, and reconcile all animosities by his own intervention," and openly declared his resolution so to do. He told a prominent official that "he would treat with equal civility all persons that were not directly injurious to him." But he speedily encountered opposition in the person of David Lloyd, who for many years was the most prominent member of the assembly, and who was at this time also the attorney-general of the province. He is described by Logan as a man "very stiff in his undertakings, of a sound judgment, and a good lawyer, but extremely pertinacious, and somewhat revengeful."³ In addition to this characterization it may be said that his conduct shows that he was an ambitious and somewhat unscrupulous party leader, who lost no opportunity to oppose and perplex the proprietor.⁴ Lloyd's determined opposition⁵ somewhat irritated Penn, who thought "more deference and consideration were due his character and station."⁶ Scarcely had the proprietor begun to consider the course he must adopt to reconstruct the government, when several persons complained to him that by the act of 1696 they had been deprived of the benefit of the old charter. Calling them before the council, he held with them a long

¹ *Charter and Laws of Pa.*, p. 579.

² *Penn and Logan Corresp.*, i, p. 19.

³ *Ibid.*, p. 18.

⁴ See Watson, *Annals of Philadelphia*, i, pp. 38-9, 504-5.

⁵ "Ply David Lloyd discreetly," said the proprietor to Logan, "dispose him to a proprietary plan, and the privileges requisite for the people's and the Friend's security." *Penn and Logan Corresp.*, i, p. 53.

⁶ *Ibid.*, p. 18.

conference, at the close of which he desired them to present to him in writing "such expedients that might be an accommodation between the old charter and the late frame." At the same time he advised them to be careful and moderate in their proceedings. They therefore requested him to issue writs for the election to council and assembly of the number of members provided for in the frame of 1683. The legislature thus convened might with him settle the government. They also declared that such a settlement would be "most satisfactory to the well affected, who * * * would peaceably and joyfully acquiesce therein." Urgent orders from England, however, caused the proprietor, January 25, 1700, to reconvene the dissolved assembly of 1699, but at the close of its session, he promised that in future he would follow the old method of election.¹ In a speech to the newly elected council in April the proprietor said that some persons had the idea that, because it was his council, it was not representative of the people. He stated that the ablest men had always constituted the council, and that he believed the chief duty of that body in legislation was to prepare laws to be submitted to the assembly. "We are two bodies," said he, "yet but one power. The one prepares and the other consents. Friends, if in the constitution by charter there be anything that jars, alter it. If you want a law for this or that, prepare it. I advise you not to trifle with government." "Friends," continued the proprietor, "away with all parties, and look on yourselves and what is good for all as a body politic, first as under the king and crown of England, and next as under me by letters patent from that crown. * * Study peace and be at unity [for] the good of all; and I desire to see mine no otherwise than in the public's prosperity. * * * Some say I come to get money and be gone. Perhaps they that say so wish it so. I hope I or mine shall be with you while I or they live. The disasters of my absence," concluded he, "have been mine as well as yours, and

¹ *Col. Rec.*, I, pp., 573-577, 590, 591, 595.

as I'm used I shall make suitable returns."¹ A member of the council then requested that a new charter be granted. Penn desired to know whether they thought the frame of government of 1683 had been vacated by that of 1696. The reply was made that they did not think so. It was believed that the "fundamentals" of the frame were satisfactory enough, but the "circumstantials, of it as to time, place, number and rotation," were undesirable.² The suggestion was thereupon made that what was useful in both frames might be incorporated into a constitution that would be firm and lasting. Penn responded that the frame of 1696 served till he came, but could not bind him against his own act. The charter of 1683 was his gift, of which fact the acceptance of it by the people was sufficient testimony. Referring to the appointment of Fletcher as governor by the crown, he said that some violence could not be averted, but that when the violence was removed the charter again came into force. How better could this be illustrated, declared he, than by the writs for election, with which he had summoned the council and the assembly. He agreed, nevertheless, that the council should be formed into a grand committee³ to read both frames of government, keep what was good in each, and add to both what was best suited to the common welfare. All the laws passed since the founding of the province should be similarly treated. Eventually, however, the council and assembly joined together in a grand committee of fifty-four to prepare a constitution.

On May 16 Penn called to the attention of the committee

¹ *Col. Rec.*, i, pp. 596-7.

² In this connection the statement of Lloyd in his "remonstrance" of 1704 is of interest (Franklin, *Works*, iii, pp. 171-2); "What rendered the former charter (1683) inconvenient, if not impracticable, was chiefly that Col. Fletcher's interruption had extinguished the rotation of the council, and, next to that, the proposal of laws by the council in presence of the governor, as also the instability of the Lower Counties, which we had before experience of and whose result was then doubted."

³ *Col. Rec.*, i, pp. 597-8.

the nature of the existing constitution of the province, and the respective powers of the council and the assembly. The next day the committee reported that the assembly should have the sole power of preparing and proposing bills, and that the governor's council should be elected. Penn replied that he would not consider fragments, but must have the entire charter before he would determine what he could and what he could not grant. He asked the committee then to consider a few of his suggestions, and, in order that he might not be accused of exerting an undue influence, he left Philadelphia for a few days and went to his country seat at Pennsbury.¹ On June 4 he told the council that he had read the charter offered for his approval. Just then a committee of the assembly came in, and asked to see the charter which Penn himself had drawn up.² With this request he complied, and "presented such a charter as he could grant." At the same time he appointed a committee of council to meet a committee of assembly for the consideration of it. Not long after the assembly waited on the proprietor, and returned his charter with a variety of amendments. A long discussion followed, of which the chief subject was the trouble that for a long time had been brewing between the province and the Lower Counties. At last in despair the proprietor asked the representatives whether they wished to be governed in accordance with the old frame of government. An emphatic negative was the reply. He then asked them whether he should govern in accordance with the royal charter. The majority declared in favor of this, and the old frame was at once returned to him.³

As there was great necessity for both a revision of the laws and the drafting of a new constitution, the proprietor, in the following October, convened an assembly to act with a council which he had appointed the preceding June.⁴ A committee was

¹ *Col. Rec.*, i, p. 605.

² *Votes*, i, p. i, p. 120.

³ *Ibid.*, pp. 121-122; *Col. Rec.*, i, p. 613-14.

⁴ *Col. Rec.*, i, pp. 580, 614.

immediately selected by the assembly to draw up a new frame. The entire legislature then entered upon the task of revising the laws. The assembly, after having passed some of them, requested Penn that, if he had prepared anything which might be helpful in the "furthering and better dispatching of the matter," he would be pleased to communicate it. He did so. Then the assembly suggested that it be allowed to adjourn, but that, during the period of adjournment four or more of its members should, with two of the council, examine the laws, and propose matters for legislation to four persons, who should be empowered to draw them up in the proper form and present them to the assembly when it again came together. Penn, who was greatly disappointed because the assembly had insisted upon the service of some of his most trusted councillors who had been elected to it,¹ replied that, after the entire legislature had agreed upon the needful alterations and amendments to the laws, he had no objection to anybody who might be appointed to put them in legal form. The council then asked the assembly not to be hasty in its resolution to adjourn. The speaker replied that it would not adjourn without the proprietor's consent. Thereupon, two members of the council suggested that a grand committee of council and assembly should "confer upon the laws, and agree upon the heads of what was fit to be done." But the assembly replied that the power of proposal was now vested in it, and that it, therefore, saw no reason for such a committee.² The prospect of further conflict appearing imminent, the proprietor prorogued the assembly.

Not until September 15, 1701, did the assembly again enter upon the consideration of a new constitution. In the meantime the proprietor had endeavored without avail to heal the breach between the province and the Lower Counties, and to reconcile the religious and political factions. News now came

¹ *Votes*, i, pt. i, p. 125.

² *Ibid.*, pp. 126, 127; *Col. Rec.*, i, pp. 616-17.

that a scheme was on foot in England once more to deprive the proprietor of his government. In his opening speech to the assembly Penn said: "The reasons that hasten your session is the necessity I am under through the endeavors of the enemies of the prosperity of this country to go to England, where, taking advantage of my absence, some have attempted by false or unreasonable charges to undermine our government. * * * I confess I cannot think of such a voyage without great reluctance of mind, having promised myself the quietness of a wilderness, and that I might stay so long at least with you as to render everybody entirely easy and safe; for my heart is among you as well as my body, whatever some people may please to think, and no unkindness or disappointment shall, with submission to God's providence, ever be able to alter my love to the country and resolution to return, and settle my family¹ and posterity in it. But having reason to believe I can at this time best serve you and myself on that side of the water, neither the rudeness of the season nor tender circumstances of my family, can overrule my inclination to undertake it. Think therefore * * * of some suitable expedient and provision for your safety as well in your privileges as property, and you will find me ready to comply with whatsoever may render us happy by a near union of our interest. Review again your laws, propose new ones that may better your circumstances, and what you do, do it quickly, remembering that parliament sits the end of next month, and that the sooner I am there the safer." The assembly in reply sent the following address: "We have this day read thy speech, * * * and having duly considered the same, cannot but be under a deep sense of sorrow, for thy purpose of so speedily leaving us, and at the same time taking notice of thy paternal regards of us and our posterity * * * in thy loving and kind expressions of being ready to comply with whatsoever expedient and provision we shall offer for our safety, as well as in privileges as property, * * * not doubting

¹ His wife and infant son John were then in the province.

the performance of what thou hast been pleased so lovingly to promise, do in much humility, and as a token of our gratitude, render unto thee the unfeigned thanks of this house."¹ But the first act of the assembly was to make a series of demands which have already been discussed in the chapters concerning the land system. Then Penn told it that in his speech he had recommended the consideration of privileges as well as of property, but had given privileges the precedence as the bulwark to secure property. But in its demands, property had been the only consideration. He wanted further to know what had been done with regard to the regular work of legislation. He asked the representatives why they had so neglected their interest as not to make use of the opportunity he had given them to secure themselves in their privileges. He declared also that he was "desirous to part with them lovingly," and that, if it happened otherwise, it would lie at their own door. The representatives laconically replied that "they had read over the laws, and remarked which appeared fit to be amended and what to be repealed, but were of opinion they had privileges sufficient as Englishmen, and were willing to leave the rest to Providence."² After some further discussion concerning the demands just mentioned, the assembly appointed a committee of two to get from the proprietor "whatever he had drawn up relating to privileges." The committee returned with "two papers * * * containing heads of a frame of government."³ Another committee was therefore chosen to consider some privileges to be put in a charter. A few days later the heads of the charter of privileges were read, and voted to be offered to the proprietor.⁴ He promptly made some amendments and sent them back. At the same time he suggested to the assembly to nominate several persons, from among whom he would appoint a deputy governor to represent him during

¹ *Col. Rec.*, ii, pp. 35-36.

² *Ibid.*, p. 41.

³ *Votes*, i, pt. i, p. 147.

⁴ *Ibid.*, pp. 149, 151.

his absence. He admitted, however, that he had already written to his son to recommend for the king's approval as governor Andrew Hamilton, who at the moment was governor of the Jerseys. In response the assembly thanked the proprietor for his kindly spirit, but since it "could not presume to that knowledge to nominate such as might be duly qualified for so high an employ, they therefore would leave it to the governor's pleasure."¹ It also returned the charter of privileges with a few alterations. But, on October 24, it ventured to ask Penn who was to represent him in the government. Exasperated by its importunate demands and the steady opposition with which he had met, the proprietor replied rather testily that that was his business, and that when the commissions were read, it would find out.² Four days later he signed the charter of privileges in its final form, and directed the keeper of the great seal to affix the same to it. When this had been done, the record states that "the charter of privileges being distinctly read in assembly, and the whole and every part thereof being approved of and agreed to," the assembly received it thankfully from the proprietor and governor.³

In this charter of privileges we find no trace of the spirit that dominated both of the earlier frames. There is no council of the political romance type, with its parental authority and supervision. No rotation in office is mentioned, nor is there a word said about the use of the ballot. The governor and council are, at least by implication, excluded from the power to propose matters for legislation, and no provision as to the family or estate of the proprietor is made. Indeed the document is scarcely worthy of examination, except as showing the advance of the assembly from a mere ratifying body to a position equal with the governor in legislative power. It also shows the extent to which Penn was forced to make conces-

¹ *Votes* i, pt. i, p. 155; *Col. Rec.*, ii, p. 48.

² *Votes*, i, pt. i, p. 161.

³ *Col. Rec.*, ii, p. 57 *et seq.*

sions to the popular will. There is ample evidence that he never liked it, and that, if he had dared, he would have vacated it.¹ This fact will appear later, but it may be well to mention here one of his utterances on the subject. Writing to Logan in 1704, he declared that the charter of 1683 had been put aside at the suggestion of David Lloyd, and consequently much to his own regret. "I acquiesced," said he, "having first shown my dislike at their disliking the model of an elected council² to prepare, [and] an assembly to resolve, and at throwing away the use of the ballot which their children, as I told them, will have, perhaps, cause sufficient to repent of their folly therein."³ How completely the spirit of the earlier frames had departed, will be seen by a recital of the provisions of this document. It will be recalled that by the first frame the government was to consist of the governor and freemen, in the form of provincial council and general assembly, while in that of 1683 the words "proprietor and governor" are substituted for the word "governor." Even in the act of 1696 it was declared that the government should consist of the governor or his deputy, and the freemen in the form of council and assembly. These statements are to be found at the beginning of each of the three documents, but in the charter of privileges the first clause deals with liberty of conscience, and its wording is borrowed from previous enact-

¹ *Mem. Pa. Hist. Soc.*, iv, pt. ii, p. 333.

² The struggles between the council and the assembly taught the latter that, if it hoped ever to gain a position of supremacy in the legislature, it must exclude the former from any place therein. It probably realized also that the proprietor could appoint the council, and, as was the custom in the other colonies, authorize it to act as the upper house of the legislature. At the same time it was too well aware not only of the proprietor's superabundant spirit of concession, but also of its own power of making his administration unpleasant for him, to fear any such action on his part. But in the chapter on the council it will be seen that the assembly under certain circumstances favored the participation of the council in legislation.

³ *Penn and Logan Corresp.*, ii, p. 18.

ments. Then, "for the well governing of the province," not the governor and freemen in provincial council and general assembly should be responsible, but an "*assembly* yearly chosen by the freemen." It should be composed of four persons from each county, and should hold its sessions at Philadelphia, unless the governor and council should see fit to select another place. It should also have power to choose a speaker and other officers, to be judge of the elections and qualifications of its members, to sit on its own adjournments, to appoint committees, to prepare matters for legislation, to impeach criminals, and to redress grievances. In short, it was to have "all powers and privileges of an assembly, according to the rights of the freeborn subjects of England, and as was usual in any of the king's plantations in America!" But if any county or counties should refuse or neglect to send members, those who did meet should exercise the full powers of an assembly, provided they were not less than two-thirds of the number that ought to meet.¹ The third clause provided for the system of combined election and appointment, as applied to the filling of the offices of sheriff, coroner,² and county clerk. The power of the governor was further limited by the provision that he should license none as tavern-keepers, except those recommended by the justices of the respective counties.³ Jealousy

¹ This clause was probably aimed at Newcastle county, from which in 1699 no representatives to council or assembly were sent. *Charter and Laws of Pa.*, p. 278.

² This was abolished by an act passed in 1706, whereby the tenure of sheriff and coroner was made wholly elective. Bradford, *Laws of Pa.*; *Col. Rec.*, ii, p. 232.

³ Two years or more prior to Penn's return to the province he had received from persons dissatisfied with the condition of affairs there all sorts of defamatory accounts, not only of open violation of the navigation acts, but of the increase of drunkenness and other vices. Hence, September 5, 1697, he sent to Gov. Markham a letter commanding him to suppress these practices. At the same time he ordered that the governor should grant no tavern licenses, unless the applicants therefor had been previously recommended by the county court. This order was embodied in a proclamation issued by Markham and the council, February 12, 1698. *Col. Rec.*, i, pp. 527-529.

of proprietary influence over the council is shown by the clause stating that no case relating to property should be brought before the governor and council, unless under a law regulating appeals. The fourth, fifth and eighth clauses deal with the style of the promulgation of laws, the privileges of criminals on trial, and the denial to the proprietor of any rights of escheat in the property of suicides, or of persons accidentally killed. The declaration of the proprietor in the eighth clause that, so far as he and his heirs were concerned, the clause providing for liberty of conscience should be kept inviolate forever, shows how intent he was upon the permanence and success of his religious policy—the most valuable legacy of Quakerism. The proprietor also bound himself and his heirs ¹

¹ That at a comparatively early date a copy of the charter of privileges was deposited with the Board of Trade, is not improbable (*Mem. Pa. Hist. Soc.*, iv, pt. ii, p. 318); but it does not appear to have been properly authenticated. When therefore the agent of the province endeavored in 1756 to induce the Board of Trade to order the proprietors to have the same read before it, the attorney for the Penns objected because the charter had not been duly entered in the public offices. The omission was remedied two years later, when the charter was entered in the records of the colonial office. (*Franklin Papers.*) The sons of William Penn, it may be said, never believed that the charter of privileges was legally valid. They respected it as the gift of their father to the people of the province, but never thought it had the weight or force of a law. In other words, they were of the opinion that it carried with it a moral, rather than a legal obligation to obey its provisions. In their opinion they were supported by the crown lawyers. The attorney general and the solicitor general told them that, although they fully appreciated the good intentions of William Penn in granting to the assembly such indefinite power, yet they thought he had betrayed thereby the rights of the crown entrusted to him. They also declared that, in order to determine the extent of the power thus "unwarrantably granted," they hoped the charter would be examined by parliament. (Penn MSS., P. L. B., vi, T. P. to Hamilton, June 6, 1760; to Peters, June 9, 1760.) But this was not done. The following citations from their correspondence will illustrate the views held by the proprietors. When, toward the middle of the eighteenth century, the assembly became engaged in a contest with the governor over the issue of bills of credit and the taxation of the proprietary estates, its obstinate conduct caused the proprietors to consider the advisability of ordering the governor to prorogue it. For a guarantee of the legality of their action, they had the opinion of a prominent crown lawyer, Sir Dudley

never to infringe any of the liberties mentioned in the charter. In conclusion it is stated that the charter could be amended only by the consent of the governor and six sevenths of the assembly; and, as an afterthought, a clause is added permitting under certain conditions the Lower Counties to act in legislation separately from the province.¹

It is probable that the proprietor embarked for England in a very unenviable frame of mind. Before him was a contest with the crown for the preservation of his rights. In the province he had been engaged in a contest for the same object with its inhabitants, and in this had suffered a defeat. His chances against the crown were certainly not bright. The people were intractable and disobedient. To pacify them he had granted a charter of exceptional privileges. Would they

Ryder. The opinion was this: that the power of adjournment possessed by the assembly did not prohibit the proprietors from exercising their right of proroguing and dissolving it. (Penn MSS., T. P. to Peters, May 13 and 26, 1758). When their intention to prorogue the assembly became known, however, the partisans of that body referred to the charter of privileges in support of the claim to the full right of self-adjournment. The proprietors replied that the other colonial assemblies were subject to prorogation and dissolution by the governor, and that that charter bestowed no more power than was possessed by those bodies. Hence the pretense of the assembly not to be prorogued, was without foundation. (P. L. B., iv, T. P. to Peters, Feb. 21, 1755.) They declared further that it was as unsafe for the people as for themselves, to claim from the charter privileges which could not be warranted by the royal charter. "The people," said they, "must take care as well as we ought to take, to keep close to the king's charter." (*Ibid.*, v, July 5, 1758.) In reply to Franklin's version of his conversation with Thomas Penn, which we have had occasion to notice in the chapter concerning the Divestment Act, that proprietor wrote to Mr. Peters, Dec. 8, 1758 (*Ibid.*, vi), "The letter Mr. Franklin wrote, stating the conversation between us, was most infamous . . . I represented the danger to the people being great to make use of powers, though granted by my father's charter, [but] not granted by the charter from the crown, as they might be called to account for the exercise of any such powers, and the charter vacated." "As to your charter," wrote the same proprietor to William Allen, May 12, 1769 (*Ibid.*, x), the "administration thinks that to have little force, and thinks you should not be too violent in your resolutions about it."

¹ *Col. Rec.*, ii, p. 60.

value it? Would they recognize and appreciate his kindness? He would wait and see. Unfortunately the first news that came to him boded ill for the restoration of harmony. In spite of all the efforts of Gov. Hamilton, whom he had appointed as his deputy, the province and the Lower Counties drifted steadily toward separation. When the governor died the separation had been consummated. Penn now determined to appoint as governor John Evans, a young Welshman, of an active and vigorous temperament, a firm friend of the proprietor and always ready to defend his interests.

Accompanied by William Penn, Jr., eldest son of the proprietor, Gov. Evans arrived in Philadelphia, February 2, 1704. A few days later the proprietor's son was made a member of the council. For some time the governor busied himself, but without success, in attempting to bring about an agreement between the province and the Lower Counties. Then he recommended to the assembly, which had just been elected, an answer to a letter from the queen for aid to New York, and some provision for the support of government. The assembly replied with cordial expressions of regard for himself and the proprietor, but thought the exigencies at home forbade the granting of any contributions for New York. The governor protested against its refusal, and laid further stress upon the fact that the proprietor expected the province to refund the salary he had paid to Gov. Hamilton, as well as to make provision for the present governor's support. The members of council sent to deliver this message, on their return reported that they had delivered it, "but that there was some appearance of a dissatisfaction upon it."¹ On June 23, 1704, the assembly presented the governor a bill to confirm the charter of privileges. Evans then declared that he believed the intention of the bill to be the assumption by the assembly of the power of absolute self-adjournment, thus excluding all possibility of prorogation or dissolution by himself. He

¹ *Col. Rec.*, ii, pp. 138-143.

hoped, however, that all disputes on the subject could be settled by conferences between the council and the assembly. The latter body with his consent immediately adjourned. Then Evans decided upon a step extremely disagreeable to the Quakers, namely, that of establishing a militia. To encourage enlistment he offered exemption from certain civic duties.¹ Before any serious outbreak occurred the assembly was again convened, and sent to the governor a bill to confirm the charter of incorporation of Philadelphia, and another to confirm the people in their property rights. John Guest, a member of the council, characterized the three bills as "absurd, unreasonable and monstrous."² The assembly demanded satisfaction for the criticism. The council decided that, as there was no particular crime charged against Guest, it could take no notice of the assembly's demand. Then a conference about the bill for confirming the charter was arranged, but the question of the governor's power of prorogation and dissolution was the stumbling block. The assembly stated that to admit the governor possessed such a right would destroy the utility of elections as provided for in the charter, and in their place would establish "elections by writs grounded upon a prerogative, or rather pre-eminence," of which the proprietor or his deputy were by the charter debarred from making use. But it was willing to fix some definite rule concerning adjournments. Relying on the opinion of Judge Mompesson, a prominent member of the council, the governor replied that he did not believe the proprietor had intended to give up the right of prorogation and dissolution, and that therefore it would not be advisable for him to do it. In fact Judge Mompesson personally informed the assembly of his views. But, headed by David Lloyd, it refused to make any concessions.³

Shortly after the negotiations with this assembly, and during

¹ *Col. Rec.*, ii, pp. 151-2.

² *Votes*, i, pt. ii, p. 10.

³ *Col. Rec.*, ii, pp. 157-8.

the early part of the session of the next, several events occurred that made the relations between the governor and at least the Quaker portion of the community still more strained. He and the proprietor's son, together with a crowd of fast young men, indulged in nightly carousals. One evening they were found by a constable in a disreputable resort. Not recognizing the governor and his companion, the officer attempted to arrest them. In the scuffle that followed he was rather roughly handled. Wm. Penn Jr. among several others was presented by the grand jury before the mayor's court in Philadelphia, and charged with assault. He was not punished, but the treatment he received made him furiously angry. He then and there threw off his Quaker garb, severed his connections with the society, and ere long returned to England.¹ About the same time the mayor of Philadelphia complained against the exemption from civic duties granted to members of the militia, against the refusal of the governor to license persons recommended by the mayor's court to keep taverns, and lastly against the fact that the sentence imposed by that court upon the keeper of the disreputable resort just mentioned, had been set aside by a proclamation issued by the governor. Evans replied defending his course in establishing the militia, and hinting that much of the opposition to it came not from any principle against it, "but through an uneasiness to see anything done under the present administration," that might serve to recommend to the favorable notice of the crown both the proprietor and the people. The second matter of complaint he thought should be decided by persons qualified to judge. To the third complaint he returned an evasive answer, but promised his assistance in suppressing vice and disorder.² Not long after an encounter be-

¹ *Penn and Logan Corresp.*, i, pp. 318-320, 322; Watson, *Annals of Philadelphia*, i, pp. 104-5; *The Friend*, xviii, p. 362; *Votes*, i, pt. ii, p. 184; Gordon, *Hist. of Pa.*, pp. 150, 610-11.

² *Col. Rec.*, ii, pp. 160-162.

tween members of the militia and the city watch occurred, but with some difficulty the disturbance was quelled.¹

In October Evans met the assembly and found it in rather a sullen mood. To its request that he would state his opinion on the three bills submitted by the previous assembly, he said that his duty was to consider bills offered by the present assembly only. The response to his assertion was in the shape of a bill to confirm the charter, another to confirm property rights,² and still another providing for affirmations in lieu of oaths. In discussing again whether the charter had deprived the governor of his power of prorogation and dissolution, the council spent considerable time, but arrived at no definite conclusion. The assembly refused to accept the amendments made by the governor,³ and when Evans and the council resolved that, in order thoroughly to examine the matters in dispute a grand conference of council and assembly should be held, the house informed his honor that it was "willing to wait on him by a committee." In decided terms Evans expressed his disapproval of this proceeding. The assembly told him in reply that it thought a select committee could do all that might be needful, and that this was the course usually adopted by parliament, to all the privileges of which by charter it had an undoubted right.⁴ After warmly expostulating with the assembly because of its delay and inaction, the governor said to the members, "I desire you * * * to maintain and fortify your real privileges as Englishmen, which is the power of making yourselves by the benefit of your constitution, in a great measure happy, and not weaken or render them fruitless by tedious delays in unnecessary scrutinies into their

¹ *Col. Rec.*, ii, p. 171.

² Both this bill and its predecessor contained many of the demands, which in chapter iii, on the land system, we noticed were not acceded to by the proprietor. *Votes*, i, pt. ii, pp. 21-22.

³ *Ibid.*, pp. 23-25; *Col. Rec.*, ii, pp. 168-172.

⁴ *Col. Rec.*, ii, pp. 174-177.

extent." Meanwhile it seems that Evans had learned of a "remonstrance" supposed to have been drawn up by the assembly and ordered by that body to be sent to the proprietor. He now demanded to know what was in that remonstrance, and promised, if there were any real grievances, to see that they were redressed. The assembly thereupon agreed that an attempt should be made to intercept it before it was carried to England. At the same time, on further consideration, the assembly told Evans that in the remonstrance it had simply protested against violations of the charter of privileges, that it had used no unbecoming language, and that in the position taken it felt assured of support from its constituents. Then closing with a sweeping criticism of the council, the assembly voted that the entire history of its contest with the governor should be published.¹

This famous remonstrance of 1704 was one of the severest blows dealt to the proprietor. It was drawn up during the heat of the discussion about the governor's power of prorogation and dissolution. In August of this year the assembly ordered a representation to the proprietor to be prepared by the speaker, David Lloyd, and two other members. In it they were to deal plainly with the proprietor, and to tell him how inconsistent were his commissions to Gov. Evans and his "former orders and proceedings" in the administration of the government with the privileges and immunities he by his charter had promised to the people. It then, probably at the suggestion of Lloyd, entered upon its minutes the following heads of complaint:

"*First*, that the proprietary at the first settling of this province promised large privileges, and granted several charters to the people, but by his artifices brought them all at his will and pleasure to defeat.

"*Secondly*, that dissolution and prorogation, and calling assemblies by his writs empowered by his commission to his

¹ *Votes*, i, pt. ii, pp. 24-33; *Col. Rec.*, ii, pp. 177-8.

present deputy, and his orders to his former deputies and commissioners of state, are contrary to the said charters.

"*Thirdly*, that he has had great sums of money last time he was here for negotiating the confirmation of our laws, and for making good terms at home for the people of this province, and ease his friends here of oaths, but we find none of our laws are confirmed, nor any relief against oaths, but an order from the queen to require oaths to be administered, whereby the Quakers are disabled to sit in courts.

"*Fourthly*, that there has been no surveyor general since Edward Pennington died, but great abuses by surveyors, and great extortions by them and the other officers concerned in property, by reason of the proprietary's refusing to pass that law proposed by the assembly in 1701 to regulate fees, etc.

"*Fifthly*, that we are like to be remediless in everything that he hath not particularly granted or made express provision for; because the present deputy calls it a great hardship upon him, and some of the council urge it as absurd and unreasonable to desire or expect any enlargement or explanation by him of what the proprietary granted.

"*Sixthly*, that we are also left remediless in this, that when we are wronged and oppressed about our civil rights by the proprietary, we cannot have justice done us; because the clerk of the court, being of his own putting in, refuses to make out any process, and the justices by and before whom our causes against him should be tried, are of his own appointment, by means whereof he becomes judge in his own case, which is against natural equity.

"*Seventhly*, that sheriffs and other officers of the greatest trust in the government, which the proprietary hath commissioned, being men of no visible estates; and if any of them have given security it was to himself, so that the people whom these officers have abused and defrauded can reap no benefit of such security.

"*Eighthly*, that although the commissioners of property have

power by their commissions to make satisfaction where people have not their full quantity of land according to their purchase, yet they neglect and delay doing right in that behalf.

"*Ninthly*, that we charge the proprietary not to surrender the government, taking notice of the intimation he had given of making terms, etc., and let him know how vice grows of late."¹

Whatever Benjamin Franklin may have insinuated to the contrary, the remonstrance, as drawn up by David Lloyd, presumably in accordance with these heads of complaint, but really with a variety of elaborations, is a series of studied insults and exaggerations, portraying the proprietor as well nigh a heartless tyrant, and the people as suffering severe oppression. "In fact its language is in no respect that of "open and intrepid defenders of the public liberties," says a Pennsylvania historian,² "but the bitter, sarcastic language of long-subdued anger." The assembly was of course represented as the spotless champion of the people's rights.³ But Isaac Norris, one of the most conservative men in the province, did not think so. His opinion, though given several years later, applies with equal force to the assembly of 1704. Writing to the proprietor, December 2, 1709, he said, "I think too much prevails when such a collective body, with whom business ought to be done, that should look at solids and substantials, set up for witty critics upon everything that is said or done, and grow voluminous, always remonstrating and valuing the last word highly. * * * The air of grandeur and sacred care for the honor and dignity of the house that runs through everything, is too visible, and the secret pride thereof too plainly appears, even in the great pretensions to and professions of mean and despicable thoughts of themselves."⁴

¹ *Votes*, i, pt. ii, p. 16.

² Hazard, *Register of Pa.*, i, p. 388.

³ The "remonstrance" may be seen at length in Franklin, *Works*, iii, pp. 124-127, 167-176.

⁴ *Penn and Logan Corresp.*, ii, p. 417.

Again, whatever Benjamin Franklin may have insinuated to the contrary, the statements of Norris and of James Logan, who were well acquainted with the whole proceeding, prove beyond a shadow of doubt that, although the remonstrance was signed by David Lloyd as speaker of the assembly, and presumably at its direction, not only was it never read before that body, and consequently was never regularly approved by it, but in order to show that all he had written and sent to the proprietor had received the full sanction of the assembly, Lloyd deliberately interpolated the minutes.¹ Not only did he do this, but in the letter to the enemies of the proprietor to whom the "remonstrance" was first directed, he said, "I am requested in behalf of the inhabitants here to entreat that you would lay these things before him, and get such relief therein as may be obtained from him;" and if the proprietor should continue remiss in his "promises and engagements," he should be obliged by, "Christian measures" to do justice "in those things in which this representation shows he has been deficient." He supposed that before this time they had heard of the "condition to which the poor province was brought by the late revels and disorders which young William Penn and his gang of loose fellows are found in." He declared also that the people of the province had been greatly abused by trusting in William Penn, and that the evidences they had of the governor's evil behavior, and of the proprietor's wilful neglect, had induced them to deal plainly with the proprietor.²

At a meeting of the council in Philadelphia, May 8, 1705, Gov. Evans had read before it letters from the proprietor relating to the proceedings of the assembly, approving his refusal of the three bills last offered to him, copies of which had been sent to England, and directing him in all cases to assert his just rights, and to prosecute the turbulent. Methods were adopted to prove that the order to send the "remonstrance" to

¹ *Penn and Logan Corresp.*, i, pp. 329-334; ii, pp. 16, 62, 248-9, 416.

² *Ibid.*, i, pp. 327-8.

the proprietor had been interpolated in the minutes of assembly, and, if possible, to bring an action of forgery against Lloyd. One of that worthy's henchmen was also to be prosecuted for his "scandalous and seditious words against the government."¹ Three days later Evans told the assembly that the proprietor, so far from agreeing with it in opinion, "was greatly surprised to see, instead of suitable supplies for the maintenance of government and defraying public charges for the public safety, time only lost * * * in disputes upon heads which he had fully settled before his departure, as could on the best precautions be thought convenient or reasonable." * * * "He is the more astonished," continued the governor, "to find you, for whose sake chiefly and not his own he has undergone his late fatigue and expensive troubles in maintaining it, (*i. e.* the government) express no greater sense of gratitude than has hitherto appeared. The proprietor also further assures us that, had these three bills * * * been passed into acts here, they had certainly been vacated by her majesty, being looked on by men of skill to whom they have been shown, as very great absurdities.² But what I must not be silent in is that he highly resents that heinous indignity and most scandalous statement he has met with in the letters directed not only to himself, but to be shown to some other persons disaffected to him. * * * If that letter was the act of the people truly represented, he thinks such proceedings are sufficient to cancel all obligations of care over them; but if done by particular persons only, and it is an imposture in the name of the whole, he expects that the country will * * * take care that due satisfaction is given him. * * * You contend and raise continual scruples about your privileges which have not been attempted to be violated, but seem to neglect what is truly so, and of the greatest importance to you. * * * The proprietor who * * * has hitherto supported the government, upon such treatment as he has met with,

¹ *Col. Rec.*, ii, p. 186.

² *Penn and Logan Corresp.*, i, pp. 356, 375.

is frequently solicited to resign * * * all without any further care. But his tenderness to those in the place whom he knows to be still true and honest prevails with him to give the people yet an opportunity of showing what they will do." Referring to the probability of strict control if the government should be resumed by the crown, the governor said, in closing, that no privileges could be hoped for or depended on but what were founded on the royal charter to the proprietor, and that those who endeavored to persuade the people otherwise, did vastly more harm than good.¹ The reply of the assembly was conciliatory in tone. The cause of this may be found in the fact that, when the contents of the "remonstrance" became generally known, so much dissatisfaction resulted that several of Lloyd's adherents failed of re-election, although he himself managed to secure the speakership. The reply ran as follows: "We are truly sorry that our proprietary and this house should disagree in opinion in the matters of our proceedings in assembly, and his being surprised is no little surprise to us, considering that to pursue our own interest, and to answer the trust reposed in us, our part is to maintain a constant respect and due regard of the proprietary [in] both honor and advantage, where at the same time we preserve the rights and privileges of the queen's subjects, the freeholders of this province, which we are of opinion ought not to be withstood, and we hope that a right understanding in him and thyself of our true meaning and due respects toward both, and our desire of advancing the safety of the people under your government, will create better opinions of our intentions and actions. * * * We should gladly know what three bills those were of which copies were sent home, and looked [upon] by men of skill as great absurdities, and what the proprietary's objections are unto them. If those three bills be the same we imagine them to be, we are of the mind [that] the interfering of the proprietary's commission granted unto thee with the charters

¹ *Col. Rec.*, ii, pp. 187-9.

granted to the freeholders occasioned such clauses as seemed absurdities to men of skill, who might not be well apprised of our charter of privileges. * * * As to the representation or letters sent to the proprietary by orders in the name of the former assembly, which he takes, it seems, as an indignity and resents it accordingly, it not having been done by this house, but being the act (or in the name) of the former; as we are not entitled to the affront, (if any be) neither are we concerned to answer it. Our part is to lament (as we really do) that there should be true occasion for such representation, or if none, that it should be offered our proprietary whom we both love and honor. And therefore we hope his obligations of care over us, and the people of this province, by no such means shall be cancelled. * * * And to conclude, as we have under the proprietary's administration hitherto enjoyed great tranquillity, we are truly desirous of a continuation of the same administration, and shall be willing to pay unto thee, his lieutenant, due respect in thy great station, not only by words, but such effective acts and actions as shall demonstrate unto the world our loyalty to the queen, honor to the proprietary, and true love to thyself."¹

To follow the disputes that ensued between Evans and the assembly at this point, would prove tedious and uninteresting. The governor sturdily defended the rights of the proprietor,² but his loose and immoral behavior became so flagrant that, in 1708, at the request of the assembly³ Penn dismissed him, and appointed Charles Gookin as his successor. In his personal conduct Gookin appears to given satisfaction, but his administration was as productive of conflict with the assembly as that

¹ *Col. Rec.*, ii, pp. 192-3.

² "I heartily acknowledge to the governor, J. Evans, his quietness, good distinction, integrity and courage. Had he passed those laws, he had destroyed me and himself too. I shall stick close by him in those methods he has taken," *Penn and Logan Corresp.*, i, pp. 354, 356. See also ii, p. 290.

³ *Votes*, i, pt. ii, pp. 183-5; ii, p. 18.

of his predecessor had been. He in turn was succeeded by William, later Sir William, Keith, who, on account of his sympathy with the assembly and his willingness to cater to its wishes, governed in comparative harmony until 1726, when he was superseded by Patrick Gordon.

Leaving the province, and its scenes of struggle and re-crimination, let us see how William Penn, in the later years of his life, felt toward the colony of which he had been the founder.¹

At the outset it must be borne in mind that, subsequent to 1699, most of Penn's knowledge with regard to the affairs of the province was derived through his correspondence with James Logan. Between Logan and Lloyd there existed a deep personal animosity. The former was an aristocrat, the latter a democrat. The former was the devoted friend of the proprietor, the latter the leader of the people. It would not be remarkable, therefore, if the statements of Logan were at times colored with prejudice, but in the main they are corroborated by Isaac Norris.²

No sooner had the news of the treatment of his son come to the knowledge of the proprietor, and the "remonstrance" been placed in his hands, than the mild and pacific attitude of Penn underwent a sudden change. With regard to the former, he said, "My son's arrival and account has not much excited my care or love towards so rude and base a people³ * * * Pray let my son have justice against the authors of that barbarous affront committed upon him and company, first [because] he was my son; second, he was first of the council, and not rightly within their order or orb of power, or their reach. They might have complained to the governor, only his supe-

¹ "Oh! Pennsylvania!" cried he, "what hast thou cost me! Above £30,000 more than I ever got by it, two hazardous and most fatiguing voyages, my straits and slavery here, and my child's soul almost." *Penn and Logan Corresp.*, i, p. 280.

² *Ibid.*, ii, p. 200.

³ *Ibid.*, ii, p. 66.

rior there. * * * I take it as done to myself, though I blame his giving any handle to those people to reflect upon him.¹ But the subsequent career of William Penn, Jr., showed him to be unworthy of his father's solicitude.² In 1720 he died in France from disease caused by excesses.³ But with regard to the "remonstrance" and its author, the wrath of the proprietor was kindled, and as Lloyd continued his opposition, Penn was unsparing in his denunciation of him. In the strongest terms of threat or entreaty he called upon the people to drive Lloyd from power, or, at least to prosecute him for his insolence.⁴ But Logan showed him the impossibility of accomplishing this, and eventually the proprietor was forced to abandon his purpose.⁵

Having shown what was the attitude of the proprietor

¹ *Penn and Logan Corresp.*, ii, pp. 107-8, 357.

² *Ibid.*, p. 236.

³ Watson, *Annals of Philadelphia*, i, p. 106.

⁴ "I expect that Friends and your assembly will do me justice upon David Lloyd * * * and unless they will make him a public example and turn him out from being recorder, or a practitioner at any of my courts, I hereby desire Judge Mompesson, as he has expressed he can, would show them the force of their charters, as well as how they have basely made use of them." *Penn and Logan Corresp.*, i, p. 357. "Watch over my just interest. Encourage the governor to be courageous in all reasonable things * * * and undermine knaves and hypocrites of all sorts. * * * That very villainy (of Lloyd) should be punished in a singular manner, and unless he visibly shifts his course I would have him indicted for it as a high crime and misdemeanor * * * For David Lloyd's letter, it speaks for itself, and I desire, nay command the governor to call a select council, and view the (copy thereof) enclosed, and see, under the greatest secrecy, what is practical and fitting to be done to thwart these intrigues, but if not to be done to purpose, then to expose the villainy and its authors. * * * Remember that he be prosecuted * * * if any room for it, unless he asks forgiveness, and does me and the country right * * * If they will not part with David Lloyd from the city, I will part with them or part them." * * * *Ibid.*, i, pp. 356-7; ii, pp. 16, 19, 65, 71, 235, 271-2.

⁵ After showing the proprietor how difficult, on account of his influence with the people, would be any attempt to prosecute Lloyd, Logan says, "He carries so fair with our weak country people, and those that long looked upon him to be the champion of Friends' cause in government matters in former times, that there is no possessing them." *Ibid.*, ii, p. 119.

toward Lloyd, it may be well now to consider something to which reference has already been made, viz., his opinion concerning the validity of the charter of privileges. His wrath against Lloyd, however, is visible throughout. With regard to the charter Logan wrote, "This people think privileges their due, and all that can be grasped to be their native right, but, when dispensed with too liberal hand, may prove their greatest unhappiness. Charters here have been, or I doubt will be, of fatal consequence. Some people's brains are as soon intoxicated with power, as the natives are with their beloved liquor, and as little to be trusted with it."¹ On another occasion, referring to the assembly, he wrote, "Ours here contends for the whole power, and leave the governor only a name, and they aver it is their right from thy first charter granted them in England, which should be obligatory on thee."² Penn then expressed his sentiments as follows: "If our friends will not behave towardly, I shall be constrained to break it (*i. e.*, the charter). However, the queen will, if I resign.³ * * * Now for the government: Depend upon it I shall part speedily with it, and had I not given that ungrateful and conceited people that charter, and had got but £400 per annum fixed for the governor, and made such good conditions for them, I had had twice as much as I now am likely to have. If I don't dissolve it, that charter, I mean, the queen will, which, after all, David Lloyd's craft and malice despised for its craziness."⁴ On February 17, 1705, the proprietor sent to Judge Mompesson the following remarkable letter. It is remarkable not only for its expressions with regard to the charter, but because it reveals the aristocratic side of Penn's character. He said, "The charter I granted was intended to shelter them against a violent or arbitrary governor imposed upon us, but that they should turn it against me, that intended their security thereby, has something very un-

¹ *Penn and Logan Corresp.*, i, p. 299.

² *Ibid.*, ii, p. 182.

³ *Ibid.*, i, p. 342.

⁴ *Ibid.*, p. 353.

worthy and provoking in it, especially when I alone have been at all the charge, as well as danger and disappointment in coming so abruptly back, and defending ourselves against our enemies here, and obtaining the queen's gracious approbation of a governor of my nominating and commissioning, the thing they seemed so much to desire; but as a father does not use to knock his children on the head when they do amiss, so I had much rather they were corrected and better instructed, than treated to the rigor of their deservings. I therefore earnestly desire thee to consider of what methods law and reason will justify by which they may be made sensible of their encroachments and presumption, that they may see themselves in a true light. * * * There is an excess of vanity that is apt to creep in upon the people in power in America, who, having got out of the crowd in which they were lost here, upon every little eminency there think nothing taller than themselves but the trees, and as if there were no after superior judgment to which they should be accountable; so that I have sometimes thought that, if there was a law to oblige the people in power in their respective colonies to take turns in coming over for England, that they might lose themselves again amongst the crowds of so much more considerable people at the custom house, exchange, and Westminster Hall, they would exceedingly amend in their conduct at their return, and be much more discreet and tractable, and fit for government. In the mean time pray help to prevent them not to destroy themselves. Accept of my commission of chief justice of Pennsylvania and the territories. Take them all to task for their contempts, presumption, and riots. Let them know and feel the just order and decency of government, and that they are not to command, but to be commanded according to law and constitution of English government."¹ What this instruction meant is shown in a letter sent to Logan a short time previous. The proprietor then directed Mompesson to take

¹ *Penn and Logan Corresp.*, i, pp. 373-5.

the necessary steps to annul both the charter of privileges and the charter of the city of Philadelphia.¹ Mompesson must have found it impossible or unadvisable to obey the order, for the charter was not annulled. As late as 1708,² however, Penn instructed Gov. Gookin to dissolve the assembly, and if that should be impracticable to call another by writ. But Logan advised so strongly against this, that the proprietor gave up the idea.³

The last important utterance of William Penn before his mind began to grow clouded, was a letter to the assembly, June 29, 1710. "It is a mournful consideration," said he, "and the cause of deep affliction to me that I am forced by the oppressions and disappointments which have fallen to my share in this life, to speak to the people of that province in a language I once hoped I should never have occasion to use. But the many troubles and oppositions that I have met with from thence, oblige me in plainness and freedom to expostulate with you concerning the causes of them. When it pleased God to open a way for me to settle that colony, I had reason to expect a solid comfort from the services done to many hundreds of people; and it was no small satisfaction to me that I have not been disappointed in seeing them prosper * * * but alas! as to my part instead of reaping the like advantages, some of the greatest of my troubles have arose from thence, the many combats I have engaged in, the great pains and incredible expense for your welfare and ease, to the decay of my former estate, of which, however some there would represent it, I too sensibly feel the effects, with the undeserved opposition I have met with

¹ *Penn and Logan Corresp.*, i, p. 358.

² In the meantime the proprietor continued to express his mind freely as to the conduct of the people, and his determination to return and reward every man according to his deserts. Among his utterances was one to the effect that certain money which Logan had sent, was the "greatest benefit that place (Pennsylvania) had yet yielded." *Ibid.*, ii, p. 246. See also pp. 234, 271, 272, 354.

³ Thy character binds thee up from it," wrote Logan, "and there must be no breach of that with this people." *Ibid.*, p. 316.

from thence, sink me into sorrow. * * * What real causes have been given on my side for that opposition to me and my interest, which I have met with as if I were an enemy and not a friend? * * * Were I sensible you really wanted anything of me in the relation between us that would make you happier, I should readily grant it, if any reasonable man would say it were fit for you to demand, provided you would also take such measures as were fit for me to join with. * * * I earnestly endeavored to form such a model of government as might make all concerned in it easy. * * * That model appeared in some parts of it to be very inconvenient, if not impracticable. The numbers of members both in council and assembly was much too large. Some other matters also proved inconsistent with the king's charter to me, so that, according to the power reserved for an alteration, there was a necessity to make one in which, if the Lower Counties were brought in, it was well known at that time to be on a view of advantage to the province itself as well as to the people of those counties, and to the general satisfaction of those concerned, without the least apprehension of any irregularity in the method. Upon this they had another charter passed *nemine contra dicente*, which I always desired might be continued while you yourselves would keep up to it, and put it in practice, and many there know how much it was against my will that, upon my last going over, it was vacated. But after this was laid aside (which indeed was begun by yourselves in Colonel Fletcher's time), I, according to my engagement, left another with all the privileges that were found convenient for your good government, and if any part has been in any case infringed it was never by my approbation. * * * But though privileges ought to be tenderly preserved, they should not on the other hand be asserted under that name to a licentiousness. The design of government is to preserve good order, which may be equally broke in upon by the turbulent endeavors of the people, as well as the overstraining of power in a governor. I designed

the people should be secured of an annual fixed election and assembly, and that they should have the same privileges in it that any other assembly has in the queen's dominions; among all which this is one constant rule as in the parliament here, that they should sit on their own adjournments, but to strain this expression to a power to meet at all times during the year without the governor's concurrence, would be to distort government, to break the due proportion of the parts of it, and make the legislative the executive part of government. Yet for obtaining this power I perceive much time and money has been spent, and great struggles have been made not only for this, but some other things that cannot at all be for the advantage of the people to be possessed of, particularly the appointing of judges, because the administration might by such means be so clogged, that it would be difficult, if possible, under our circumstances at some times to support it. As for my own part I desire nothing more than the tranquillity and prosperity of the province and government in all its branches; * * * but seeing the frame of every government ought to be regular in itself, * * * and every branch of it invested with sufficient power to discharge its respective duty for the support of the whole, I have cause to believe that nothing could be more destructive to it than to take so much of the * * * executive part of the government out of the governor's hands, and lodge it in an uncertain collective body, and more especially since our government is dependent, and I am answerable to the crown if the administration should fail, and a stop be put to the course of justice. On these considerations I cannot think it prudent in the people to crave these powers, because not only I, but they themselves, would be in danger of suffering by it. Could I believe otherwise, I should not be against granting anything of this kind.* * * I have had but too sorrowful a view and sight to complain of the manner in which I have been treated. The attacks on my reputation, the many indignities put upon me in papers sent over hither into

the hands of those who could not be expected to make the most discreet and charitable use of them, the secret insinuations against my justice, besides the attempt made on my estate, * * * the violence * * * shown to my secretary (Logan) of which * * * I have cause to believe that had he been as much in opposition to me, as he has been understood to stand for me, he might have met with a milder treatment from his prosecutors, and to think that any man should be the more exposed there on my account, and instead of finding favor meet with enmity, for his being engaged in my service, is a melancholy consideration. In short, when I reflect on all these heads of which I have so much cause to complain, and at the same time think of the hardships I and my suffering family have been reduced to, in no small measure owing to my endeavors for and disappointments from that province, I cannot but mourn the unhappiness of my portion dealt to me from those of whom I had reason to expect much better and different things. Nor can I but lament the unhappiness that too many of them are bringing on themselves, who, instead of pursuing the amicable ways of peace, love, and unity, which I at first hoped to find in that retirement, are cherishing a spirit of contention, and opposition. * * * Where are the distresses, grievances and oppressions that the papers sent from thence so often say you languish under? * * * Could I know any real oppression you lie under that is in my power to remedy, * * * I would be as ready on my part to remove them as you to desire it, but according to the best judgment I can make of the complaints I have seen, and you once thought I had a pretty good one, I must in a deep sense of sorrow say that I fear the kind hand of Providence * * * will, by the ingratitude of many there to the great mercies of God, hitherto shown them, be at length provoked to convince them of their unworthiness, and, by changing the blessings that so little care has been taken by the public to deserve, into calamities, and reduce those that have been so clamorous and causelessly

discontented to a true but smarting sense of their duty. * * * The opposition I have met with from thence must at length force me to consider more closely of my own private and sinking circumstances in relation to that province. * * * I must think there is a regard due to me that has not of late been paid. Pray consider of it fully, and think soberly what you have to desire of me on the one hand, and ought to perform to me on the other. * * * God give you his wisdom and fear to direct you that yet our poor country may be blessed with peace, love, and industry, and we may once more meet good friends, and live so to the end.”¹ The wish of the proprietor was never gratified. Feeble in body and mind, he passed the remaining years of his life in calm retirement far from the scene of his buried hopes and crushed ambitions. “Mr. Penn was very sweet,” wrote his wife, a short time before his decease, “when I kept the thoughts of business from him.”²

¹ Proud, *Hist. of Pa.*, ii, pp. 45-53.

² Passages from the Life of William Penn, p. 512.

CHAPTER V

THE COUNCIL

THE preceding chapter has given a fairly accurate idea of the constitution and duties of the council. During the governorship of Fletcher the tenure of its members was appointive, but after the close of his administration it again became elective,¹ and so continued till June 1700, when, the frame of government of 1683 having been set aside, Penn appointed his council.² From 1684 to 1686, and from 1690 to 1692, it acted in an executive capacity.³ In conjunction with the governor, as an administrative board, furthermore, it supervised the building and repair of bridges and highways. This, however, was confined to the principal roads or "king's highways." But its powers in this respect were eventually assumed by the county authorities.⁴ It was a part of the legislature till 1700. But after this time it was composed mainly of the best known and most conservative inhabitants of the province, devoted friends of the proprietors, from whom they received their appointment. It was designed that they should support the party of the proprietors, and this they ordinarily did. In truth till 1718⁵ they acted as the real controlling force in the management of affairs, compelling both governors and assemblies to keep to some extent within bounds, and promoting meas-

¹ Except in September, 1696, when Gov. Markham appointed his council. *Col. Rec.*, i, pp. 495-6.

² *Ibid.*, p. 580.

³ *Ibid.*, pp. 206, 212, 242, 317.

⁴ *Charter and Laws of Pa.*, p. 285; *Col. Rec.*, i, pp. 387-390, 499; ii, pp. 67, 111; *Laws of Pa.*, 1700, 1715, 1732, 1762, 1765.

⁵ *Col. Rec.*, iii, p. 39.

ures which were of advantage to the proprietary family. Again, the council had certain judicial powers. Many civil cases were brought before it, either on original suit or by appeal from the county courts. It heard cases in admiralty, remanded others to the proper courts, and tried criminal cases where for any reason the regular tribunal did not act.¹ In general, during the early period of the history of the province, it heard appeals in cases involving £10 or more. In some instances trials were held without juries. It was not uncommon also for a committee of the council to be appointed to arbitrate between parties to a suit. As the council superintended the work of lower magistrates, so it could try and punish them. As a rule some of its members were county or provincial judges; but usually care was taken that judges who had heard the case in an inferior court should not be allowed to hear it again when tried on appeal.² After a system of courts had been established, however, the judicial functions of the council were transferred to the supreme or provincial court. The only exception to this, during a brief period, 1721-1734, was the exercise by the council of the powers of a court of chancery.

Considering more specifically the legislative powers of the council after the issue of the charter of privileges, we find that the commission given by the proprietor to that body, October 28, 1701, was rather non-committal, if the charter was intended to exclude the council from legislation. By the commission it was constituted a council of state to advise and assist the governor in all matters relating to the government, and to the peace, safety and well being of the people. During the absence, or on the decease or incapacity of the governor, a part of it might exercise all power which was given by the royal charter to Penn, and which was necessary for the good gov-

¹ *Col. Rec.*, i, pp. 76, 82, 90, 317, 329, 441, 445, 477, 479; *Charter and Laws of Pa.*, pp. 164, 299.

² *Charter and Laws of Pa.*, p. 164.

ernment of the province and territories, both for the administration of justice and for the security and preservation of the inhabitants. Its members, lastly, should be appointed or removed by the proprietor at pleasure.¹ Two years later, upon the decease of the deputy governor, Andrew Hamilton, the government immediately devolved on the council. At the opening of the legislative session the assembly desired that the qualifications usually required of assemblymen should be given. In reply the council stated that it did not believe the present constitution allowed it to join in legislation with the assembly; but that the exigency of affairs compelled it to assume merely the control designed by its commission. An agreement was made, however, to give the needful qualifications, but the council asserted that this act was not to be viewed as a preliminary step toward participation in law-making. The house then requested a conference concerning the power of the council in legislation. But that body declared in reply that it did not believe its authority as outlined in the commission, or indicated by the practice in other colonies, extended to legislation. The assembly urged the necessity of redressing grievances and of attending to other matters which might not require actual laws. But the council refused to change its opinion.²

In 1711 the question came up again. At this time the assembly declared that the exclusion of the council from legislation, upon the death or absence of the governor, would show a defect in the constitution.³ The following year, however, it adopted the view of the council of 1703, and a law was enacted that upon the death, or during the absence of the deputy governor, the council should exercise all powers except those of legislation, until the vacancy was filled by the proprietor or by the crown.⁴

¹ *Col. Rec.*, ii, p. 61. ² *Ibid.*, ii, pp. 105, 107, 108. ³ *Ibid.*, p. 523.

⁴ In 1706, by an act entitled "An act for the further securing the administration of the government of this province," it had been provided that, upon the death or absence of the lieutenant governor, the president of the council and five members thereof

With regard to the participation of the council in the work of legislating when the governor was present, the assembly took a different view. Logan had advised the proprietor to order that the deputy governor should act with the advice and consent of the council, of which he himself was a member. Accordingly Penn instructed Hamilton, Evans, Gookin and Keith, at the beginning of their respective governorships, to pass no bills without the approval of the council.¹ We have already observed that the charter of privileges makes no specific mention of the council as acting in a legislative capacity. What the omission signified is a matter of doubt. The assembly believed that it was the intention of the framers of the charter to establish a legislature which should consist only of itself and the governor. But the general conduct of Penn, as well as his various plans and practices, made it evident that he wished no governor to act without the advice and consent of the council.² The friends of the proprietor argued that appointed councils existed in the other provinces, and that, though the action of such a body of appointees might sometimes be a hardship to individuals, still that contingency did not affect the constitutional question, whether the proprietor or his deputy could avail himself of the services of such a body in the work of law-making. When the proprietor was present in

might "take upon them the government of the province, with as full power and authority as any lieutenant governor." But in 1709 the act was repealed by the crown. The reason given by the attorney-general was that "her majesty's approbation of a lieutenant governor might be eluded; at least so long as the proprietor should think fit to continue the government in the hands of the president and council." *Pa. Arch.*, 1st series, i, p. 155; Bradford, *Laws of Pa.*

¹ *Penn and Logan Corresp.*, i, p. 268; ii, 291; *Votes*, ii, pp. 419-424; *Col. Rec.*, ii, p. 496; Penn MSS., *Offic. Corresp.*, i, J. Logan to Mrs. Penn, Feb. 1, 1726. Gov. Gordon was similarly instructed. *Ibid.*, P. Gordon to Mrs. Penn, Oct. 18, 1726.

² "I desire, therefore, that the assembly may * * * consider what is fit for them in modesty to ask of the crown, as well as me. * * * I desire they may propose only what is necessary and reasonable in itself, and to all such things, as far as they shall be approved by the council, I desire thee to concur." W. Penn to Gov. Gookin, March 14, 1711, *Mem. Pa. Hist. Soc.*, iv, pt. i, pp. 208-9; *Votes*, ii, pp. 419-24.

person he could reject any bill. Hence common justice would allow him to be on the alert lest anything unsatisfactory should become a law in his absence, and this was best guarded against by causing the governor to follow the advice and consent of the council. Unless the proprietor could have some such security, they believed that he might suffer serious detriment, if his deputy could be persuaded to do anything inimical to his interest.¹ Therefore, in 1704, when a certain bill came before the governor and council, the latter resolved that it should not be passed without amendment. Conferences with the assembly followed, but it refused to admit that the council had any legislative powers² when the governor was present. Two years later Gov. Evans expressed the opinion that, although the co-operation of the council was held to be confined exclusively to matters of state, it could not by that course of reasoning be excluded from a share in legislation; for, said he, the passing of a bill into a law was so much a matter of state as to affect the interest of the queen, of the proprietor, and of the people.³ But the house adhered to his opinion. Until 1763, however, at which time John Penn assumed the gubernatorial office, the proprietors instructed all the governors to perform no act of government without the consent,⁴ as well as the advice of the council. The possession of this power enabled that body often to exercise an indefinite, but none the less real, influence over legislation.

¹ Mrs. Penn, by her instructions to Gov. Keith, May 26, 1724, had ordered that at least one-half the council should be Quakers, and that the total membership was never to exceed twelve or be less than eight. The latter rule was adhered to thereafter. *Votes*, ii, pp. 414, 419-424.

² Thomas Penn wrote to Mr. Peters, March 30, 1748 (Penn MSS., *Supp. Proc.*), that the council could not "join with the assembly in the making of any law."

³ *Col. Rec.*, ii, pp. 271-2.

⁴ Penn MSS., P. L. B., viii, T. P. to John Penn, Feb. 10, 1764.

CHAPTER VI

THE LOWER COUNTIES

IN the discussion of the boundary dispute with Maryland we have seen that the rights which William Penn possessed in the Lower Counties were obtained, August 24, 1682, by the deeds of enfeoffment from the Duke of York. But we have also seen that, aside from the precarious claim that they were "an appendix to New York," the title of the duke to the Lower Counties was not valid until March 22, 1683, when they were granted to him by Charles II. The deeds of enfeoffment therefore were worthless, except possibly to show an intention of the duke, which at a later time he might more fully carry out. In 1685, however, when the duke became James II., the title to the Lower Counties was vested legally in the crown, and so remained until the Revolution. Hence the right which Penn claimed to both the soil and the government of that region rested merely on the acquiescence of the crown. In fact, in the royal approbation of the commissions issued to Gov. Evans in July 1703,¹ and to all succeeding governors, there was a clause which provided that the governor should exercise jurisdiction over the Lower Counties only during the pleasure of the crown. The comparative unimportance of this section of country probably accounts for the failure of the king directly to assume the government.

Passing now to a consideration of the causes which led to the union of the province and the Lower Counties, we find that, at the assembly held at Chester in December 1682, a petition was presented by eighteen representatives of the latter. In the

¹ *Col. Rec.*, ii, p. 115; *Penn and Logan Corresp.*, ii, p. 66.

name of their constituents the following request was made: "We humbly desire that we may be favored with an act of union by the governor and assembly for our incorporation in and with the province of Pennsylvania, in order to the enjoyment of all the rights and privileges of the aforesaid province, and that we may ever after be esteemed, and accounted as freemen of the before mentioned province. This being our desire and humble request in the assembly, we have desired the president and two other members of the upper counties, part of this province, to present it to your honors, and if we are so happy to obtain our request, we will forever acknowledge it, and in all faithfulness subscribe ourselves yours in all lawful obedience.¹" The reason for this petition is not hard to ascertain. The population of the Lower Counties was not numerous. The people there were exposed to encroachments from Maryland. For several years they had been under the strict jurisdiction of the authorities at New York. William Penn's kindness and magnanimity were well known. His title on the face of it seemed valid enough. To unite with the province therefore appeared to be a happy solution of their difficulties. At any rate the proposition was favorably received by the proprietor and the representatives of the province, and on December 7, an act of union was the result. It was stated that, "whereas the freemen of the said counties have by their deputies humbly besought their present proprietary and governor to annex the said counties to the province of Pennsylvania, and to grant unto them the same privileges, and that they may live under the same laws and government that the inhabitants of the said province now do, or hereafter shall, enjoy, and since the union of two distinct people that are under one governor is both most desirable in itself, and beneficial to the public, and that it cannot be so cordially and durably maintained to the mutual benefits of each other as by

¹ For the sake of clearness this quotation has been slightly altered from Hazard, *Annals of Pa.*, p. 610.

making them equally sharers in benefits and privileges," it was enacted that the Lower Counties should be annexed to the province, and that the people thereof should be governed by the same laws, and should enjoy the same privileges as were, or should be, possessed by the people of Pennsylvania.¹ But whatever "rights, privileges, franchises, royalties and jurisdictions" may have been granted to Penn by the Duke of York, they did not, and could not, legally empower him either to assume the government of the Lower Counties, or to unite them with the province. However innocent may have been the intention of the proprietor, and however sure he may have been of the validity of his title, his act was clearly one of usurpation.² This weakness of title, then, may be reckoned as the first of the causes underlying the later disagreement between the two sections of country. Another cause was the difference between the people themselves. Those in Pennsylvania were of English birth, while the inhabitants of the Lower Counties were for the most part of Dutch and Swedish parentage. Their religious beliefs also differed. The people of the province were Quakers, but those in the Lower Counties were Calvinists, Lutherans, or Episcopalians. For many years there was considerable commercial rivalry between Newcastle and Philadelphia.³ Chester county and Newcastle county disagreed as to their respective boundaries. The distance of the Lower Counties from Philadelphia, the place where the sessions of the council and assembly were held, often prevented a regular attendance of the representatives. Both these facts led to disputed elections. Lastly, personal and political jealousies may be considered as potent factors in the quarrel.

¹ *Charter and Laws of Pa.*, p. 104.

² That Penn may have cherished a dim idea of this fact seems to be shown by the closing words of the act of union, viz.: "Given at Chester, *alias* Upland, this 7 day of December, 1682, being the second year of the government of William Penn, *proprietary and governor of Pennsylvania, by the king's authority.*"

³ *Penn and Logan Corresp.*, ii, p. 325 *et seq.*

Sectionalism then was the deep, underlying cause. The people of the Lower Counties, as they realized the expansion of which the province was capable, feared its political supremacy, and took measures to check it before the balance of power had been lost.

While the proprietor was still in the province, in March, 1684, the first note of the coming conflict was heard. A complaint came before him and the council charging him with want of faith in not entering and clearing certain vessels at Newcastle. Other malcontents complained to the governor of Maryland that their taxes were too high.¹ Measures were taken to pacify the complainants, but the trouble did not cease. Two members of the council from the Lower Counties were for supposed misconduct dismissed from it.² For a while the council refused to issue writs to fill the vacancies. Then the assembly, in May, 1687, induced by a request from the representatives for Sussex county, resolved "that the president and council be moved that the counties may not suffer a vacancy by the suspension of members, but that the persons may either be re-admitted, or else writs issued out to the respective places for a new choice." Because the Lower Counties feared the partiality of the provincial court when its members came exclusively from the province, it was also resolved that the president and council be requested that, for the continuing of a good understanding between the province and the Lower Counties, there might be at least one of the provincial judges chosen from the latter. In reply the council stated that, "if a suspended member be not admitted nor clear himself within two months, then a new writ shall be issued to choose another according to law." In the choice of judges also there should be "tender regard and due respect had to the Lower Counties."³

About this time another event happened which contrib-

¹ *Col. Rec.*, i, p. 101.

² *Ibid.*, pp. 176, 196-198.

³ *Ibid.*, pp. 203-204; *Votes*, i, pt. i, p. 40.

uted to increase the ill-feeling. It seems that John Grantham, an inhabitant of Newcastle county, had secured judgment and costs of suit on a bond given by Thomas Wollaston of the same county. The county court granted immediate execution. Thereupon the sheriff seized and sold a portion of Wollaston's property for the benefit of Grantham. Wollaston petitioned Gov. Blackwell and the council for relief against a forcible entry and detainer. The governor and council then ordered a warrant to be sent to the justices of the peace who lived nearest the place where the property was located, "to view the said force" and remove it. If they found none they should require the sheriff to return a jury to ascertain whether any force had been used, and by whom. In case the jury found that force had been resorted to, the court should fine and imprison the offenders, and restore quiet possession to the petitioner. In the meantime Wollaston had made a surreptitious appeal to the provincial court, and it decreed that possession should be re-delivered to him. Grantham then appealed to the assembly. Upon reviewing the proceedings, it decided that the judgment of the provincial court was very severe, and asked the governor and council, as the highest court of the province, to try the case. Thereupon the governor and council went to Newcastle. The county court reported that by the judgment of the provincial court Wollaston had been given possession. But the jury had found the sheriff guilty of forcible entry on Grantham's property. This proceeding of the sheriff was characterized by the governor and council as "a great affront, and contempt of their authority." Wollaston was called before them, and acknowledged that possession had been re-delivered to him. Then Grantham's wife presented a petition to the effect, that, by a judgment surreptitiously obtained, and forcibly executed, Grantham had been kept out of his just rights. In reply, Wollaston submitted a copy of the proceedings of the provincial court, and Grantham gave in the judg-

ment of the county court. The governor and council decided that the debt to Grantham had not been satisfied by Wollaston. It was believed that there was no just ground of exception to the proceedings of the county court. They declared that the order of the provincial court for restoring possession was not intended to be executed till the debt and damages had been satisfied. Hence, in spite of their former orders to the county court, the governor and council confirmed Grantham in his possession, and instructed the sheriff to restore the property.¹

No sooner had this case been disposed of than another presented itself. The justices of the county court at Newcastle complained to the governor and council that John White, the clerk of the court, had so improperly conducted himself toward them, that unless he were punished therefor, they would not serve. It appears that, in petty revenge for a censure imposed upon him by the justices on account of errors he had made in a certain transcript, he purposely made a false entry on record of statements from three of the justices to the governor and council. After a short examination of the matter, Blackwell and the council declared his act to be a misdemeanor, revoked his commission, and made a new appointment. The following year, 1690, White petitioned the council for reinstatement. Inasmuch as his commission had been for good behavior, and as he had not by due course of law been convicted of any offense, the appointee of Gov. Blackwell was soon after dismissed from office, and White was reinstated.²

After Gov. Blackwell, in 1689, had given up his position, the relations between the province and the Lower Counties became still more strained. At a meeting of the president and council, held September 5, 1690, five persons were commissioned as judges of the provincial court, and of these four were from the province.³ This was an answer to the request of the assembly, that at least one of the judges should come from the

¹ *Col. Rec.*, i, pp. 234, 236, 253, 258-260.

² *Ibid.*, pp. 261, 327, 329.

³ *Ibid.*, p. 343.

Lower Counties. But with this selection of judges certain members from the territories, who had not been present at the meeting, expressed great dissatisfaction. They desired that in one of these commissions a judge from the province should be named first, and in the other a judge from the Lower Counties, so that each first-named judge should appear to have been commissioned as president of the court, and could act as such when the sessions of the court were held in his particular jurisdiction.¹ The dissatisfaction culminated in a secret meeting of the councillors from the Lower Counties. After discussing their grievance in the matter of the appointment of judges, and censuring the earlier appointees for their neglect or unwillingness to perform their duties, they usurped the powers of a full board and proceeded to the nomination and choice of a new set of judges, two of whom came from the Lower Counties. They resolved also that no officer should be appointed by the council to exercise jurisdiction within a given county, unless two members of the council from that county were present at the time the appointment was made. A committee was appointed to request William Markham, the keeper of the great seal, to affix it to the commissions, but he refused to do so. At a regular meeting of the president and council subsequently held, a protest was entered against the conduct of the persons who had pretended to act as the council, and who "in an irregular and undue manner had * * * issued forth pretended commissions for constituting provincial judges con-

¹ This form of commissioning the judges seems to have been in accord with the action of the proprietor. In the first commission issued by him to the provincial judges, August 6, 1684, Nicholas More of Philadelphia was named first. To this commission Penn attached over his own signature a postscript distinctly stating that the commission was "for the three upper counties and the town of Philadelphia." Another copy of the commission was made for the Lower Counties, in which William Welch of Newcastle was named first, the proof of which lies in the fact that, on September 11, 1684, the death of William Welch, presiding judge, was announced. A new commission for provincial judges was then asked for and obtained. *Col. Rec.*, i, pp. 119-121.

trary to the express letter of the laws." In a proclamation, which was issued shortly after, their proceedings were declared void.¹

Another cause of dissatisfaction in the Lower Counties was the form of government adopted about this time. An attempted compromise of the differences, in which it was proposed to satisfy them with regard to the appointment of judges, and in other matters, having failed, in April, 1691, seven members from the Lower Counties filed the following protest and withdrew from the council: "The mode of the five commissioners was the most agreeable to them, or to the counties which they represented. The commission of the council was the next, though much less convenient than that of the five commissioners, on account of the encroachments thereby made upon their rights and privileges by the province, in imposing officers upon them without their consent or approbation. The method of a deputy governor was the most disagreeable and grievous of any, on account of the choice of all officers being placed in a single person, and the expense or charge of his support; therefore, they would not agree to accept of that commission. But that rather than the country should be without government, they would consent to that of the council; provided no officers whatever were imposed upon any of the three Lower Counties, without the consent of the respective members of council for these counties. They desired to excuse themselves for not agreeing to have these things put to the vote, which, they said, they had experienced, the members for the province would scarce ever do, till they were sure it would go against them. They, in behalf of the Lower Counties, protested against the acceptance of any commission but that of the five persons, and resolved that, should the province act otherwise, they would govern themselves by the commission then in force, till the proprietary's pleasure should be known therein." Notwithstanding this protest, the president and council con-

¹ *Col. Rec.*, i, pp. 344, 345; Proud, *Hist. of Pa.*, i, pp. 352-4.

tinued their endeavors to overcome the fears of these members, and to induce them to return, but in vain. They met at Philadelphia, August 17, 1691, but only two members from the Lower Counties were present. As soon as they were assembled, they entered upon the consideration of the following bill: "For as much as the present state and emergency of this government requires some speedy provision for the support and safety thereof, and for the better establishing the justice and peace of the same, by reason of the breach that the representatives of the annexed counties have lately made in wilfully absenting themselves from their charteral attendance in the last legislative council and assembly, and declining their other incumbent duties and services to the present constitutions of this province; as also in opposing and tumultuously preventing the election of new members to supply the neglect of the said absenting representatives, withstanding all provincial acts of government, and denying the powers of the same, Therefore, * * * be it declared and enacted * * * that the meetings of council since the dissent and refusal aforesaid of the representatives of the said annexed counties, and the meetings of the deputy governor and representatives of the province in provincial council and assembly met, * * * are the provincial council and assembly of this province * * * to all intents, constructions and purposes."¹ But there is no proof that this ever became a law.

Early in 1692 the proprietor sent a commission to Thomas Lloyd to be governor of the province, and one to William Markham, who had joined with the protesting members of the council, to be governor of the Lower Counties. This Penn did most reluctantly, and evidently in the hope that the breach between the two sections would be healed, and the new commissions would not be accepted. Writing to a friend at the same time he said. "Now I perceive Thomas Lloyd is chosen by the three upper, but not the three lower counties, and sits

¹ Proud, *Hist. of Pa.*, i, pp. 355-361.

down with this broken choice. This has grieved and wounded me and mine I fear to the hazard of all. Whatever the morals of the Lower Counties are, it was embraced as a mercy that we got and united them to the province, and a great charter ties them, and this particular ambition has broken it; for the striving can arise from nothing else; and what is that spirit that would sooner divide the child than let things run in their own channel, but that which sacrifices all * * * to wilfulness? Had they learned what this means, *I will have mercy and not sacrifice*, there had been no breaches nor animosities there till I had come at least. I desire thee to write to them, which they will mind now more than upon the spot, and lay their union upon them, for else the governor of New York is like to have all, if he has it not already.”¹ To relieve the mind of the proprietor, and to present to him the affairs of the province and the Lower Counties in a more favorable light, shortly after receiving their commissions, the two deputy governors and their councils addressed to Penn a letter. In it, for the sake of harmony, they agreed to be satisfied with the plan of the two deputies last proposed, and announced it as the intention of the province and of the Lower Counties to act together in council in the promulgation of a few bills to be submitted to the consideration of the next assembly.² But the sessions of this assembly and the deputy governors and councils were not harmonious, and came to an abrupt termination.

Aside from the fact that the publication of Gov. Fletcher's commission at Newcastle was followed by “firing of guns, great shouting and joy,”³ no other event of importance in the struggle is to be recorded till 1699. It seems that in 1683 Penn had appointed Capt. Peter Alrichs as commander of the fort at Newcastle. Six years later, when the wisdom of establishing a militia was agitated, the members of the council from the Lower Counties were strongly in favor of it.

¹ Proud, *Hist of Pa.*, i, pp. 357-8.

² *Ibid.*, p. 362.

³ *Col. Rec.*, i, p. 369.

Indeed, a petition was sent to the council requesting it "to settle the country in such a posture," that, by force of arms, it might be well defended against its enemies. In reply the council appointed a committee to investigate the conduct of Frenchmen who were in the province, and to assure the Indians of the friendship of the English. This was not satisfactory to the Lower Counties and a company of militia was formed there.¹ Furthermore, in 1696 and 1697 the court of Sussex county sent to Gov. Markham and the council a petition for protection against the French, urging that many depredations had been committed and that at that moment a French war vessel was in the vicinity. The councilmen referred the matter to the governor and resolved that any expense he might incur therein should be defrayed by a provincial tax.² But the failure to make adequate provision for their defence caused the inhabitants of Newcastle county, in 1699, to raise such a disturbance on the day of the election, that no representatives either for council or assembly were chosen. When the returns of the election were opened, it was found that the sheriff of that county had sent to Gov. Markham and the council a half sheet of blank paper, and a letter containing this message. "I here enclosed send you the return of the names of the council and assemblymen chosen here. * * * To give you any reason for such an election is beyond my power; have had no discourse with any of the electors about it." One Major Donaldson is particularly mentioned as having been a party to the disturbance, and the governor and council were very indignant over certain letters written by him, as well as provoked at the impudent return of the sheriff. Markham then called the attention of the assembly to the matter. A grand committee, consisting of all the members of the council and assembly, sharply censured the conduct of the sheriff and Donaldson, and characterized the letters written by them as "a great indignity, and high misdemeanor against the government." The

¹ *Col. Rec.*, i, pp. 334, 335, 337.

² *Ibid.*, pp. 524, 539-541.

committee further recommended that the offenders should be brought before the council to answer their misconduct. But they both disavowed any intention of wrong-doing, and the sheriff declared that he had sent the blank sheet of paper as a joke. Both were dismissed without punishment.¹ But in order to avoid the repetition of such proceedings, a law "concerning elections of representatives in council and assembly" was immediately enacted. It provided that, if the freemen of any county within the province or the territories should neglect, or refuse to elect their representatives for council and assembly, they should be fined £100 by the governor and council. For neglect of duty on the part of a sheriff £50 was the penalty. Absence from the council or assembly was punished in each case by a fine not exceeding twenty shillings. Moreover, if, by reason of refusal or neglect to send representatives, the quorum required by the frame of government could not be obtained, it should then be lawful for "the members of council and assembly that do meet with the governor or his deputies * * * to act and proceed in all matters requisite and necessary for executing the powers of the government."² A few months later a petition for defence was sent from Newcastle county to Markham and the council. In reply the council stated that, if the fort at Newcastle was inadequate to afford protection, it was the fault of the people dwelling there. It declared that the building of large forts involved too great an expense. Then it referred to the refusal of the people in the county to send representatives, and postponed further consideration of the matter till the arrival of the proprietor.³

In October, 1700, Penn summoned an assembly, but, owing to the lack of sufficient notice of the election, the returns from Newcastle county were thrown out. The proprietor then issued new writs to fill the vacancies. For a while several of

¹ *Col. Rec.*, i, pp. 567, 569, 570.

² *Charter and Laws of Pa.*, pp. 278-9.

³ *Col. Rec.*, i, pp. 562-564.

the members from the Lower Counties failed to appear. At length the house asked the proprietor if the act of union was in force. Penn replied that it was. The members from the Lower Counties then made the following suggestion: "That the union shall be confirmed on condition that at no time hereafter the number of representatives of the people in legislation in the province shall exceed them of the annexed counties; but if hereafter more counties be made in the province, and thereby more representatives be added, that then the union shall cease." To this the assemblymen from the province would not agree. Thereupon, Penn proposed that all acts which particularly affected the Lower Counties should require for their passage a two-thirds vote of the members from that section, and a majority vote of those from the province. In reply the assembly resolved that, although there had been some uncertainty about the "construction of the words *equal privileges* in the act of union, the Lower County members being of opinion that the act is not in force according to its primitive institution," still, the necessary legislative business of the session should be attended to, and the matters in dispute should be left to the consideration of the next assembly. This is the first distinct appearance of the jealousy cherished by the Lower Counties of the political supremacy of the province. At the close of the session, however, it was resolved that one clause of the proposed charter of privileges should provide for the holding of certain sessions of the assembly in the Lower Counties.¹

In July of the following year, Penn called a special session of the assembly to consider a letter from the king commanding a contribution to be sent for the defense of New York. The members from the province sent an evasive answer. But seven representatives of the Lower Counties requested the proprietor to inform the king of their defenceless condition. "His majesty," said they, "hath not been pleased to take

¹ *Votes*, i, pt. i, pp. 130, 131, 140.

notice of us in the way of protection, having neither standing militia nor persons empowered to command the people in case of invasion * * *. These things we hope by your honor's influence will incite his majesty to take into consideration our present circumstances, and not require any contribution from us for forts abroad, before we are able to build any for our own defense at home."¹ Two months later he again summoned the assembly. It had been in session only a short time when the smouldering discontent of the Lower Counties burst forth. Early in October a petition from Philadelphia was sent to the council, complaining "that, by reason of sundry objections made to the law passed at Newcastle, being without [the] bounds of the province," the people refused to obey it. Hence it was desired that the laws passed at the session of the assembly held at Newcastle in 1700 should be confirmed. A bill to this effect was promptly drawn by the council and sent to the assembly.² Thereupon certain members of assembly from the Lower Counties called upon the proprietor and protested that the bill "carried with it consequences highly injurious and destructive to the privileges" of that section. As they could not participate in the proceedings without manifest injustice to their constituents, they told him that they thought it advisable to return home. Penn asked them to state their opinions more definitely. One of the members then read a paper which contained their views as follows: "The laws made at Newcastle, being owned on both sides to be good in themselves, must suppose some reason to re-enact or confirm them. But the reasons mentioned in a certain petition brought in by the justices and officers of the court of Philadelphia have not strength, they having convicted none of disaffection to the laws passed at Newcastle, nor performed the execution past of the law, which in that case was their duty. In the bill brought into the house from the governor, no reason is alleged for the confirmation of laws but this, that it

¹ *Col. Rec.*, ii, p. 31.

² *Ibid.*, p. 47.

is usual and customary. But the laws so confirmed were only temporary, and a necessity in those cases were the reason, which cannot hold in this, and we know it becomes no assembly to enact or confirm laws without reason. Further, the consequence will be fatal to the Lower Counties, for their representatives cannot make laws in the territories, but must come into the province to make laws which must affect the territories, which we think very unreasonable. Further, by the late act of union, the Lower Counties were to have equal privileges in all things relating to the government with the upper, but to say or own the laws passed at Newcastle want confirmation here, is to discourage Newcastle to be the seat of the assembly hereafter, and to humor some persons but supposed to be disaffected, we shall incur the clamor of many hundreds in our own counties. Lastly, if the laws made at Newcastle be not binding, we cannot conceive that their being confirmed here with the Lower Counties in conjunction with the upper, will add any force or strength to them, unless they please to show us what power they have more to make laws with us in the province, than we have to make laws with them in the territories." In reply the proprietor discussed the question at some length, dwelling particularly on the fact that the practice of confirming laws had been frequent, both in Pennsylvania and in England. For the laws to be confirmed, he thought, was no derogation to their validity. He acknowledged, however, that, if he were to remain in the province, he would not be in favor of the plan. Still, as some foolish contests had arisen, which, however groundless, "might be improved in the governor's absence and drive them all into confusion," he desired that before he went, all difficulties might be removed; and said "that he took it very unkind to himself in particular [that] they would now give occasion of a rupture, such a return as they would find perhaps he deserved better from their hands." To this they replied that it was not through any personal dislike to him, for whom they had

always a sincere respect, but that they must be just to their constituents, and that therefore they could not proceed, unless they could act safely in regard to the privileges of the Lower Counties. The proprietor then sent for all the members of assembly from both sections of country. He told them that it was no small wound to him, to think that, at the earnest request of the Lower Counties, and with the good-will of the province, he had undergone considerable expense to unite them, only to find that they were on the point of destroying their unity. He called their attention to the fact that the royal commission to Fletcher as governor, his own letters patent of restoration to authority, and the subsequent letters from the king, had recognized their unity, in that both he and Fletcher had been named therein as governors of the Lower Counties, as well as of the province. He begged them to be careful in what they did, "lest it should look too unkind now at his departure, and carry a very ill report of them all to England." The members from the Lower Counties asserted that, whatever might have been the case at first, they had for some time been great sufferers by the act of union, and that they could not endure the expense incident to it. The proprietor then told them that they were "free to break off, and might act distinctly by themselves." With this the members from the Lower Counties expressed themselves greatly pleased. But Penn cautioned them that the separation must be only upon amicable terms. "They must first resolve to settle the laws, and, as the interest of the province and those Lower Counties would be inseparably the same, they should both use a conduct to each other consistent with that relation."¹ The next day the proprietor sent to the assembly the following letter: "Friends, your union is what I desire, but your peace and accommodation of one another is what I must expect from you. The reputation of it is something; the reality much more. I desire you to remember and

¹ *Col. Rec.*, ii, pp. 49-51.

observe what I say. Yield in circumstantial to preserve essentials, and being safe in one another, you will always be so in esteem with me. Make me not sad now I am going to leave you, since 'tis for you as well as for your friend, proprietor and governor, W. P." Several assemblymen from the Lower Counties then told him that they had endeavored to come to some agreement in the house, but that the members from the province had "persisted so obstinately in refusing them any saving of their privileges that would be consistent either with their honor or interest, that they could not sit." They stated their intention therefore to depart for their homes. Penn did not believe the differences between them were so serious as to prevent an agreement, and suggested that messages should be sent to the opposing factions. It was at length agreed that a general meeting to settle the differences should be held.¹ The result of this conference is summoned up in the terse statement of the records: "And the assembly was dissolved."² In the charter of privileges however, there was a clause to this effect, that, if at any time within three years the representatives of the province and of the Lower Counties should refuse to act jointly in legislation, separate assemblies might be formed. The number of members from each county of the province should be doubled, and two might be sent from Philadelphia. The number of members in the assembly of the Lower Counties, should be fixed according to their wishes.³

In October 1702, when Governor Andrew Hamilton met the assembly, the difficulty was no nearer a solution than before. The Lower Counties had refused to accept the charter of privileges, and no representatives were sent from there. Those from the province immediately requested that they might take advantage of the opportunity afforded them to

¹ *Col. Rec.*, ii, p. 52; Hazard, *Register of Pa.*, xv, p. 182. ² *Ibid.*, p. 56.

³ *Ibid.*, p. 60.

separate from the Lower Counties. The governor referred to the inconveniences, particularly as to the tobacco trade, which a separation would bring upon the province. He told them that, as the right of the proprietor to the Lower Counties was at that moment disputed in England, if the province formed an assembly distinct by itself, the Lower Counties in all probability would "remonstrate to the queen, that having hitherto been under the government of Pennsylvania, they were now rejected and thrown off, and so became utterly destitute of all form of government." They would then ask the queen to take them under her immediate protection. This, said the governor, would be the readiest means to defeat the proprietor in what he was endeavoring to do for them. Upon the whole, he thought, it would be wiser to defer the application for separate assemblies, till more definite intelligence of the state of affairs in England¹ could be secured. To this the representatives replied that they "had long groaned under the hardship" of the act of union. Now that by the charter of privileges an opportunity to free themselves from this hardship had been afforded, they felt themselves obliged to make use of it for their safety and quiet in the future. An open conference between the council and the representatives

¹ Edward Randolph, surveyor of the customs, and Robert Quarry, judge of the admiralty, were very active in fomenting this dispute between the province and the Lower Counties, probably with the hope that the crown would assume jurisdiction over the latter, if not over both. Chalmers, *Revolt of the American Colonies*, i, p. 380. In an address in 1701 to the Board of Trade from the members of the assembly from the Lower Counties, protection against French privateers and other piratical marauders was requested. The dangers to which they were exposed by sea and land were vividly depicted. It stated that Col. Quarry, who was the bearer of it, was well acquainted with all the circumstances, and complained that Penn, when appealed to for relief, had "answered either with silence, or ineffectual discourse." To a copy of this address is affixed the following in Penn's handwriting: "Have not some of these men bravely rewarded me?" *Coll., Pa. Hist. Soc.*, i, no. 4, p. 278. The following year a bitter complaint against Penn's misgovernment of the Lower Counties was made to the Board of Trade, and a petition was sent to the queen to take them under her immediate government. *Mem., Pa. Hist. Soc.*, iv, pt. ii, pp. 324, 327, 329, 332.

was then arranged. In the meantime the council resolved that, as some persons in the Lower Counties had declared "that had writs been sent to their sheriffs as usual, they would have elected together with the province, to the end it may not appear that the province doth designedly throw off and separate themselves from the said counties without any cause given on their sides, it will therefore be highly for the justification of the province * * * as well as justice to the said counties, that they have an opportunity of appearing given them, that measures may be better concerted; and that should they refuse or neglect to send up members, the province will then be clear." Furthermore, the council resolved that it would "press with all earnestness the arguments that have before been used, and endeavor to convince them that, notwithstanding the practices of some who, appearing their friends, should impose upon them and lead them to confusion," the governor and council, in the conference held with them, had no other purpose than their real advantage.¹

The result of the conference was, that the representatives of the province agreed to consider the question further, and desired to adjourn that they might consult their constituents. The governor asked them whether this was offered in accordance with the proposal made to them that sufficient time should be allowed to summon representatives from the Lower Counties to act with them. Avoiding a direct answer, they said that, what upon mature consideration they had decided, they had declared, and had not agreed to say anything more on that head. It was not for them to direct what course the governor should pursue. Hamilton then granted their request, and ordered writs of election to be sent to the sheriffs of the Lower Counties.² But a month later the governor was informed by the deputies who had been elected there that, as the representatives of the province had been chosen under the charter of privileges, while they themselves had been elected under writs

¹ *Col. Rec.*, ii, pp. 72-74.

² *Ibid.*, pp. 74-75.

issued several days later, they could not sit in assembly together. The governor replied that this was due to their neglect to obey the provisions of the charter of privileges. They insisted that it had never been accepted by the Lower Counties, and therefore was not binding on them. Hamilton declared that it was signed by the speaker at the order of the house, of which at the time they were a part. But they replied that, at the time it was signed, the members of assembly from the Lower Counties were not present, hence, they were not concerned with it.¹ In spite of the governor's arguments to the contrary, they adhered to the opinion that the different methods of election prevented their acting with the representatives of the province. Some thought the representatives, as a convention of the people of the two sections, might confer together. Others believed they were fully empowered to act as an assembly. To the latter view the members from the Lower Counties would not accede, and hinted that they had been called merely as a plausible excuse for the province to separate from them. After further consideration, the representatives of the province declared their willingness to proceed to legislation, but the other faction held the opinion that they could not join with them on the present footing without betraying their privileges, and consenting now to what before they had expressly refused, *i. e.*, to the charter of privileges.

The governor and council then resolved that the representatives of both the province and the Lower Counties had been legally elected, and that, as the writs had been issued under powers granted by the charter, by holding an election in obedience to them the Lower Counties had recognized the charter as valid.² Thereupon, they sent to the deputies the following questions: Whether the representatives of the province were willing to proceed in legislation with those of the Lower Counties? whether the latter would do the same? and what methods would the recusant party suggest for the formation of

¹ *Col. Rec.*, ii, pp. 75-76.

² *Ibid.*, pp. 76-81.

an assembly? The former replied, "We * * * are both willing and desirous to proceed in order to act in assembly according to the direction of the charter, being the foot on which we conceive ourselves called and convened." The latter answered, that, "finding they are called here on a different foot with those of the upper counties cannot, if there was no other obstacle, join with them in legislation; but are cheerful and willing, when warrantably convened, to proceed in assembly * * * though they'll not presume to direct the government in what methods to convene them." The governor sharply criticised the ambiguity of both replies, and desired an explanation to be given. Did the representatives of the province mean that they were willing to proceed to legislation on the footing upon which they had been elected, or did they wish to have their representation increased as the charter had provided? The majority of them replied that the first supposition was correct. But David Lloyd, with his usual artful obstinacy, "continued to interpose that the question might be no further urged, affirming their answer was plain and clear, though the question was double and ambiguous." In this opposition he was supported by the representatives of the Lower Counties.¹ In despair of affecting any agreement, the governor resolved to dismiss them. The representatives of the province immediately asked him to allow the additional members to be elected. The request met with a refusal. A few months later the governor died, and the dispute for a time ceased.²

In February 1704, when Gov. Evans relieved the president and council of their duties, he asked their opinion as to the wisdom of calling an assembly. To his surprise,³ he was in-

¹ *Col. Rec.*, ii, pp. 82-83.

² *Ibid.*, pp. 83-86, 88.

³ On Feb. 15, 1704, Logan wrote to the proprietor that Evans was "exceeding troubled that he understood nothing of this difference between the upper and lower counties before he left England." *Penn and Logan Corresp.*, i, p. 268. This statement of Logan, who was on the spot, completely refutes Benjamin Franklin's assertion (*Works*, iii, p. 160), that Evans "affected to be surprised at finding them in separate states." See *Col. Rec.*, ii, p. 126.

formed that there was an "assembly in the province now in being, separate from the territories, in pursuance of a certain charter of privileges * * * which had occasioned some difficulties."¹ The governor, having increased the number of the council by the addition of several persons from the Lower Counties as well as from the province, told it that the first subject to claim its "thoughts and care" was the calling of an assembly. Thereupon the council declared that, by virtue of a clause in the charter of privileges, "several steps had been made towards a division of the province and territories in legislation, which had been strenuously opposed from time to time by the governor and council." Hence, it was resolved "that, considering the province and territories had ever hitherto been joined in one government and were now continued so, both by the proprietor's commission to and the queen's approbation of the present lieutenant governor, and because it may be justly feared that the consequences of a separation may prove very injurious to both; therefore, notwithstanding all the advances that have been made towards a separation, all endeavors should be used to keep the whole still united together, as well in legislation as administration."² The governor then held a conference with certain leading men of the Lower Counties. In agreement with them he judged it would be advisable to send writs there to elect in each county four members of assembly.³

In April the opposing parties met once more in Philadelphia. When the representatives of the province came to the council room the governor called in the representatives of the Lower Counties. The former immediately expressed surprise that they found in the room any persons other than the members of the council. Evans stated that, before they proceeded to business, he desired to give them his opinion of the most suitable method for the joint action of the two sets of representatives. They replied that the representatives of the province

¹ *Col. Rec.*, ii, p. 116.

² *Ibid.*, p. 119.

³ *Ibid.*, p. 120.

constituted an assembly by themselves, and that to admit of any other arrangement would infringe their privileges. The governor declared that he would ever be careful of their privileges. He referred to the importance of a well-regulated legislative power. "I am well assured, gentlemen," said he, "by all my orders, that her majesty considers both this province and territories as one entire government, and both the royal approbation and my commission tell me that I ought to use my utmost endeavors to keep them so." Common interest also, he thought, should keep them together. Calling their attention to the advantages of harmony in their proceedings, he desired them to make every effort to bring about an agreement.¹ The representatives of the Lower Counties offered to join in legislation with the province, and to accept the charter of privileges,² provided each county should be represented by four members only. This the representatives of the province were unwilling to grant, and "persisted in their opinion, that, without violating their charter, they could not recede from what they had done, nor lessen * * * their numbers."³ Hence, both

¹ *Col. Rec.*, ii, pp. 126-127.

² At this time James Logan wrote to the proprietor: "There was mighty canvassing on that side pretending the church (of England), but nothing could be carried, notwithstanding the clergy all around used all endeavors. * * * That unhappy charter thou granted * * * will most certainly utterly separate the province and territories, I doubt to our confusion." *Penn and Logan Corresp.*, i, p. 282.

³ In the "remonstrance" of 1704 is the following: "As to the conveniency of the union of the province and Lower Counties, we cannot gainsay it, if the king had granted thee the government as the duke had done the soil; but to our great grief and trouble we cannot find that thou had any such grant; and if thou had thou would not produce it, though often requested so to do. Therefore, we take it the harder that thou, who knew how precarious thy power was to govern the Lower Counties, should bring thy province into such a state and condition that, whenever the crown had assumed that government, or the people there revolted or refused to act with us in legislation, as they often did, that then the said second charter (1683) should become impracticable, and the privileges thereby granted of no effect to the province, because the representatives of the Lower Counties were equal in number with those of the province, and the charter required a greater number than

parties declared that, as things now stood, it was better for each set of representatives to act by itself. The governor, seeing that at this time all efforts to effect a union would prove fruitless, recommended to them that in all their proceedings they would endeavor to pave the way for a consolidation in the near future.¹ But the union was never effected. From this time to the Revolution, the territory comprised within the present state of Delaware was governed by a legislature composed of a governor appointed by the proprietors, and an assembly elected similarly to that of Pennsylvania. The laws passed by this legislature, however, were never sent to England for the inspection of the crown.²

William Penn viewed these proceedings with sorrow and anger. He had never intended that the separation provided for in the charter of privileges should be permanent, for, in a letter written to James Logan in 1704, he says, "I think it so scandalous by its affront to the queen, who graciously united

the province had, or by charter could elect for members of council and assembly; and our numbers by the charter could not be increased without the revolvers' consent." Franklin, *Works*, iii, pp. 125-126.

¹ *Col. Rec.*, ii, pp. 128-132.

² "The acts passed at Newcastle I apprehend may be useful. That relating to convicts may probably do in that government, as we never send them home for the king's inspection, else it would, I suppose, be repealed, as the Lords of Trade do not like any act of that sort." P. L. B., ii, T. P. to Hamilton, Oct. 9, 1749.

In 1756 a number of Quakers intended to petition the crown against an act passed by the assembly of the Lower Counties for establishing a militia. To this end the agent of the province was instructed to request the Board of Trade to order the proprietors to submit to its inspection the complete collection of the laws passed by that assembly. But the Board refused to comply with the request. (*Franklin Papers*.) Thereupon Thomas Penn wrote to Gov. Denny, Jan. 8, 1757 (P. L. B., v), "I had never laid any of these laws before the crown, and did not choose to do it myself, as not being obliged so to do." Again, November 28, 1770, (P. L. B., x) the proprietors wrote to Gov. John Penn. "The Lords of Trade made objection to our entitling ourselves 'true and absolute proprietaries' of the Lower Counties, in the laws passed in the province. We think you may as well avoid giving them that offense, as we send them no laws passed in the Lower Counties."

by the approbation of the governor what the worst of our enemies had always sought to separate, and ungrateful to me that made them that grant only in case the government should be violently taken away from me, but never designing to rend the territories from the province."¹ Again he wrote to James Logan, "Those sturdies will never leave off till they catch a Tartar, and must come hither to be lost in the crowd of taller folks, to be humbled and made more pliable; for what with the distance and the scarcity of mankind there, they opine too much, and I am under great dissatisfaction at what thou wrotest about their aversion to the union. I know this aversion to a union, now that the queen has ordered the means of it, will set an ill complexion upon them towards her at my cost at last, and recommend their enemies. Nay, were I better posted in the Lower Counties, I would find a way to dissolve the charter so far, but in no real privileges. * * * This business of the disunion sticks with me still. I fear it will lead to a worse thing, unless we adjust the matter where it is. What will the queen think, after all my memorials to preserve the government without a seam, to find, and that on our side, it is torn in two. Oh! the weakness of men! Use the utmost of thy address with the wise, the honest, and the weak, to accommodate things, and don't let them make use of a charter against me now that I keep the government at unspeakable charge, and at evidence that I only granted in the extent it has against our enemies, when they and I feared I should lose it."²

But if the proprietor hoped that harmony would eventually be restored, his hopes were shattered by an event that happened in 1707. It seems that Gov. Evans and the assembly of the Lower Counties had passed an act for the purpose of maintaining a fort at Newcastle. To this end an imposition was laid upon all vessels sailing to and from Philadelphia. Because the master of a certain sloop refused to pay the tax, the vessel was

¹ *Penn and Logan Corresp.*, ii, pp. 66.

² *Ibid.*, i, pp. 305-308.

fired upon. This conduct of the Lower Counties was severely censured by the assembly of the province, and it called the attention of the governor to the words of the royal charter, which gave the right of undisturbed passage through the waterways. After offering a somewhat lame excuse, to the effect that he had not thought the act would give offense to the province, and that, if the matter had been properly represented to him in the first place, he would never have consented to it, he agreed to suspend the further execution of the act.¹ That in passing this act, however, the governor was prompted by a spirit of petty spite against the province, seems to be proved by the constant warfare he maintained with its assembly,² as contrasted with the harmony that existed between him and the assembly of the Lower Counties. In fact, when it was learned that he was soon to be superseded by Charles Gookin as governor, expectation ran high that he would join with several prominent men of that section in an application to the queen to have the Lower Counties erected into a separate government. Their intention also was to secure for him the first commission as governor. But Evans refused to entertain the proposition, and in October, 1708, called upon the assembly of the Lower Counties to enact certain laws. In reply it desired him to lay before it the powers of government with which he was invested over the Lower Counties. Then the governor referred to the fact that, under the authority of his commission from the proprietor, and of its approbation by the queen, he had, with the other branch of the legislature, passed a number of laws. As his powers up to that time had remained unquestioned, he did not think it necessary to make any vindication whatsoever of them. His reply caused a division in the house. Eight out of the seventeen members asserted that no just occasion to question the governor's authority had been given. The raising of such objections, they thought, originated in a desire to destroy their present form

¹ *Col. Rec.*, ii, pp. 379-383.

² *Ibid.*, pp. 141-423 *passim*.

of government, and to introduce a change to which they were strongly opposed. Hence they refused to sit any longer in the assembly.¹

When Gov. Gookin assumed control, a few months later, the faction that wished the crown to take the government demanded that he should show his right to exercise jurisdiction over the Lower Counties. At the same time he was requested to join with it in petitioning the queen for a special commission to himself as governor. It urged that Penn had always declined to prove his legal right to the government, and hinted that the validity of laws passed in a section of country not included within the bounds of the royal charter might be called in question. But as Gookin had been expressly instructed by the proprietor to bring about a union with the province, he of course did not comply with the wishes of the faction.² In anger at his refusal the malcontents sent an address to the Board of Trade, complaining of the hardships they had suffered under Penn's administration.³ Learning of this, in reply to a letter of inquiry from Logan, Penn wrote, "The present deputy governor has the same powers the other had, and I will make those unruly fellows tamer to me and my interest in a while, I hope. Let them be ruled without vexatious assemblies, and follow the laws of England, for that is the least danger to him, and the best bridle to the shameless and base crew."⁴ But the suggestion does not seem to have been followed, and the financial troubles of the proprietor prevented him from paying further serious attention to the affairs of the Lower Counties.

In December 1715, an attempt was made to wrest from Penn the possession of the Lower Counties. Lord Sutherland, a prominent courtier, petitioned the king for a grant of the territory. He based his request on a debt of £20,000 which the

¹ *Col. Rec.*, ii, pp. 423-426.

² *Penn and Logan Corresp.*, ii, pp. 303, 305, 315.

³ *Ibid.*, p. 325.

⁴ *Ibid.*, p. 339.

crown owed to him, on his zeal and activity for the Protestant royal succession in England, and on his services in Scotland during the recent rebellion. He also called attention to the fact that half of the profits, which by the deeds of enfeoffment should have been paid to the Duke of York, and consequently to the crown, had not been so paid. If the crown did not see fit to make him a grant of the Lower Counties, he desired that he might be given the receipts which were the property of the crown. The petition was referred to the attorney general and solicitor general.¹ The crown lawyers gave a long opinion, the object of which was to prove the validity of the title of the crown to the region in question. In spite of the opposition of the mortgagees of the province, the title of the crown was declared good, but before any royal grants were made, a decree to that effect should be issued by the court of chancery.²

The news of this petition from Lord Sutherland caused fear in the Lower Counties lest private rights should be disturbed. Therefore in 1717, the inhabitants of that region sent to Gov. Keith an address, stating their apprehensions in this matter, since the settlers there had obtained the larger part of their land from Penn and the governors of New York. They asserted that their own interests and those of the proprietor were so closely interwoven, that a separation would involve their destruction. Hence they expressed a willingness that the two sections should be again united.³ Their address met with no response from the assembly of the province, but the ambitious projects of the governor were thereby furthered. With the concurrence of the assembly of the Lower Counties, he intended to pass a bill for remitting the arrears of quit-rent. On account of objections offered by the commissioners of property, however, he was unable to execute his design. He used a seal from which the name of Penn was omitted, and in

¹ *Breviat of Evidence*, Penn and Baltimore, p. 64.

² Chalmers, *Opinions of Eminent Lawyers*, i, pp. 40-56.

³ *American Broad-sides*.

1724, by a charter issued in the name of the king, erected Newcastle into a city, with the power of sending representatives to the assembly. He excluded Quakers from office by compelling them to qualify by oath. He even endeavored to persuade the Lower Counties to draw up an address to Lord Baltimore. Factions immediately arose. A paper was circulated again broaching the plan of making the Lower Counties subject to the immediate jurisdiction of the crown. But when it was learned that Lord Sutherland was renewing his application for a grant of the Lower Counties, these schemes came suddenly to an end. If his wishes were complied with, there was a possibility that the inhabitants might be held accountable for the arrears of quit-rent. To quiet the clamor of the people, Gov. Gordon made Newcastle once more a town, and assured the inhabitants of the Lower Counties that the proprietors would do all in their power to prevent the grant to Sutherland from being made.¹ The younger Lord Sutherland, however, continued for some time to urge his father's claim, and the proprietors dreaded lest the king might lend it a favorable ear.² But their fears proved groundless, and the territories continued united to the province through the common executive.

¹ Penn MSS., *Offic. Corresp.*, i and ii, J. Logan to John Penn, Feb. 1, and July 24, 1726; Letters from Gov. Gordon to John Penn, 1726, 1727 and 1728.

² *Ibid.*, *Corresp. of the Penn Family*, John Penn to T. P., July and Sept., 1733; Jan. 24, and March 4, 1734.

CHAPTER VII

THE OATH AND THE AFFIRMATION

AMONG the many tenets of the Quakers, the one which concerned the taking of an oath was probably the most prominent. The injunction of Christ, "Swear not at all, but let your communication be yea, yea, and nay, nay," was accepted literally by the Quakers and incorporated into their creed. It was therefore unlawful, they believed, for Christians to assume the obligations of an oath. A simple affirmation of the truth or falsity of any statement, they thought, was sufficient. But the reverential character attaching to an oath might often deter a man from committing perjury, while a simple affirmation, no matter how solemnly made, might not serve to elicit the truth. Though the Quaker affirmation among the sect itself might prove sufficiently binding, a person who was not a member of the sect, if given his choice of taking an oath or an affirmation, might not feel himself bound by the affirmation. A positive means of securing accuracy of information, allowing for the defects common to humanity, was therefore necessary for the preservation of the colony. To those who believed that giving of testimony, serving in office, or performing of other civil and political duties should be based on a simple affirmation to carry out the trust reposed in them, an affirmation should be allowed. To those on the other hand who were not conscientiously opposed to the taking of an oath for such purposes, that privilege also should be granted. It must be remembered, however, that for a Quaker magistrate to administer an oath was as inconsistent with his creed as for him to take one. Hence, when Pennsylvania became some-

thing more than a community of Quakers, and people of other moral and religious persuasions began to make their presence felt, a conflict was inevitable.

In England, when the royal charter was granted to Penn, the Quakers, so long as they refused to take the oath of supremacy, or to conform to the requirements of the secular and ecclesiastical law, were suspected of being either Catholics or traitors. On this account they were denied civil and political rights, and made liable to heavy fines and other penalties.¹ For the holding of office and giving of testimony, an oath was indispensable. The charter declared that no laws should be enacted which might be repugnant to those of England. What, then, were the Quakers in Pennsylvania to do? They must either prove false to their religious principles by allowing the usual oaths to be administered in the courts of the province, or, by enacting laws allowing an affirmation in lieu thereof, subject those laws to the danger of repeal by the crown. But they chose rather to remain consistent, and enacted laws which were most in harmony with their religious predilections. It must be remembered that liberty of conscience meant to the Quaker not only that his civil status should not be affected by his opinions, but that he might perform without molestation those acts which his religion commanded, and refrain from those which it forbade.

According to the provisions of the "Great Law," passed at Chester in December, 1682, the requirement for the giving of testimony was that the witness should solemnly promise to speak the truth, the whole truth, and nothing but the truth. In case any person so called to give evidence should be afterwards convicted of wilful falsehood, that person should "suffer and undergo such damage or penalty as the person or persons against whom he or she bore false witness, did or should undergo, and should also make satisfaction to the party

¹ See 13-14, Charles II., chap. i. An act for preventing mischiefs that may arise by certain persons called Quakers refusing to take lawful oaths.

wronged, and be publicly exposed for a false witness, never to be credited again in any court, or before any magistrate in the said province." Again, it was enacted that all persons employed in the service of the government, as well as all electors, should be "such as profess and declare they believe in Jesus Christ to be the Son of God, the Saviour of the world." Moreover, all officers and electors should subscribe the following declaration: "I, A. B., do hereby freely acknowledge and solemnly declare, and promise fidelity and lawful obedience to William Penn, son and heir of Sir William Penn, deceased, and his heirs and assigns, as rightful proprietary and governor of the same, according to the king's letters patent, and deeds of grant and enfeoffment from James, Duke of York and Albany; and that I will never act or do by word or deed, directly or indirectly, anything, nor consent to, nor conceal any person or thing whatsoever, to the breach of this solemn engagement."¹ The omission of any mention of allegiance to the king was remedied by an act passed the following year.² In the succeeding assemblies all these provisions were expressly ratified. But in 1693, when Fletcher the royal governor assumed control, a serious difficulty presented itself. In 1689, an act of parliament, 1 William III., chap. 18, provided that all Protestant dissenters, in order to escape the penalties against non-conformity, should take an oath of fidelity and allegiance to the crown, and of belief in the Trinity and in the Scriptures. Quakers, however, were allowed, in lieu of an oath, to take an affirmation in this form: "I do sincerely promise and solemnly declare before God and the world," etc. But in the commission to Fletcher it was stated that the members of assembly, before entering upon their duties, should take the oaths and test prescribed by the act of parliament. When Fletcher met the assembly the majority of its members remonstrated, not against taking the declaration and test, but against confirming them by oath. There-

¹ *Charter and Laws of Pa.*, pp. 108, 116, 122.

² *Ibid.*, p. 143.

upon six of them took the oaths. The remaining fourteen refused "for conscience sake" to do so, and were allowed by the special grace and favor of the governor to subscribe the "declaration of fidelity," and "profession of the Christian faith," as allowed to Quakers in the act of parliament.¹

Notwithstanding this action of the governor and assembly, among the fifty acts which Fletcher, at the request of the assembly, later agreed to confirm, were those concerning liberty of conscience, and the qualification of officers and electors. But in the frame of government of 1696 the act of parliament was again recognized. It was enacted that, in all cases where a person could not for conscience sake take an oath, his affirmation should be just as valid. False affirmation should "incur the same penalty and forfeitures as by the laws and statutes of England are provided against persons convicted of wilfull and corrupt perjury." It was provided, however, that no person, who by the acts of parliament for trade and navigation was required to take an oath, should be permitted to take an affirmation instead.²

Two years prior to this, when Penn was restored to his government, among the promises he made to the king and queen was this, that he would take the declaration of fidelity to the crown, as provided in the act of parliament.³ Hence during his administration, 1699-1701, the members of assembly and other officers "took a solemn attestation of allegiance to King William III, and fidelity to William Penn, proprietary and governor, * * * and subscribed the declaration appointed by * * * parliament."⁴ At the same time Penn suggested to the assembly the re-enactment of the provisions of the law of 1682. The suggestion was adopted in a law passed in 1700 concerning the qualification of officers, and later incorporated in the charter of privileges.⁵

¹ *Col. Rec.*, i, p. 398.

² *Charter and Laws of Pa.*, pp. 247-249.

³ *N. Y. Col. Doc.*, iv, pp. 108-9.

⁴ *Col. Rec.*, ii, p. 35.

⁵ "All persons who * * * profess to believe in Jesus Christ, the Saviour of the

By 7-8 William III, chap. 34, and 13 William III, chap. 4, parliament had enacted that the form of the affirmation to be taken by Quakers in lieu of an oath should be as follows: "I do declare in the presence of Almighty God the witness of the truth of what I say;" but it was expressly provided that they should not be allowed to give evidence in criminal cases, to serve on juries, or to bear any office or place of profit in the government. On January 21, 1703, the Board of Trade sent a representation to the queen, stating that judges and other officials in Pennsylvania and the Lower Counties should be obliged to take the oath or affirmation directed by the law of England, and that all persons who were willing to take an oath in any public or judicial proceeding, should be allowed so to do. If the judges refused to administer it, their proceedings should be null and void. An order in council to this effect was immediately issued, and sent to Robert Quarry.¹ The provincial council, however, on which at the death of Gov. Andrew Hamilton, in March, 1703, the government had devolved, was somewhat uncertain as to its course of conduct. It sent to Quarry and several other persons who had been appointed by a *dedimus potestatem* from King William to administer to the governor the oaths prescribed by parliament for the observance of the navigation acts, and requested them to administer to it the oath or affirmation as the queen's order had directed. But on the ground that in a former instance they had been unfairly dealt with,² the

world, shall be capable, notwithstanding their other persuasions and practices in point of conscience and religion, to serve this government in any capacity, both legislatively and executively, he or they solemnly promising, when lawfully required, allegiance to the king as sovereign, and fidelity to the proprietor and governor, and taking the attests as now established by the law made at Newcastle in the year 1700, entitled, 'an act directing the attests of several officers and ministers.' *Ibid.*, p. 57.

¹ *Breviat of Evidence*, Penn and Baltimore, p. 62; *Col. Rec.*, ii, p. 89.

² On his accession to office in 1701, Gov. Andrew Hamilton informed the council that he had conferred with the commissioners named in the king's *dedimus*

commissioners refused, unless they were first given possession of the document. To this the council acceded; but shortly after the commissioners returned it with the statement that they did not believe themselves empowered to administer any affirmations. After much persuasion, the collector of the customs was induced to administer the oath to two members of the council, and they in turn administered to the others the affirmations prescribed by parliament.¹ But this did not bring the trouble to an end. The assembly in 1703 induced the council to give its members the necessary qualifications for office. Thereupon all the members of assembly "subscribed their attestations in the words of what is required by the oaths enjoined by the law of England." One member, however, was willing to take only what was directed by the charter of privileges and the laws of the province, viz., "allegiance to the king, fidelity to the proprietary, and obedience to the laws." After some discussion the other members also thought that, by what

potestatem, about administering to him the necessary oath. They insisted that the document should be placed in their keeping, "otherwise they were unwilling to touch with, or be concerned in it." After some discussion it was resolved, "that, because the said *dedimus* is to six persons, * * * or to any five of the council with the king's collector of his customs, * * * who by virtue thereof have equal power with the commissioners to administer the said oath, and because it is to continue in the government from time to time, to be administered to each governor that hereafter shall be appointed, for which reason the council seems to be named as a body politic that shall have power to administer the said oath in time to come after the decease or removal of the commissioners named, and because the said commissioners are * * * private men, it may be uncertain where to search for * * * the said instrument upon their decease or otherwise when there shall be occasion, and by that means the succeeding governors be left exposed," the *dedimus* should be given to the master of the rolls to be used as occasion might require. But the commissioners adhered to their opinion and would not even promise, if the instrument were entrusted to them, that they would administer the oath. Thereupon the governor obtained excellent legal opinion in favor of the view of the council, and in April, 1702, the oath was administered by certain members of that body and the collector of the customs. *Col. Rec.*, ii, pp. 62-63, 68-69.

¹ *Ibid.*, pp. 89-96.

they had done, they had exceeded what was really required of them; and asked the council to state whether or not the contention of the recusant member was correct. The council replied that, as allegiance to the crown was required, the law of England was the most proper to direct how the allegiance should be declared; and that, since the rest of the members or assembly had conformed to the act of parliament, the recusant member should do the same.¹

Shortly after this the repeal of the act of 1700 was announced. It was stated by the attorney-general that in the act no regard was paid to the Christian religion. No one can tell, said he, how far "the conscientious practices allowed by this act may extend."² Thereupon, the assembly sent to Gov. Evans a bill providing that a solemn affirmation should be as valid as an oath. The governor and council decided that, because the act was contradictory to the queen's order commanding oaths to be administered to persons who were willing to take them, an amendment should be added, that the act should not be in force until the queen gave her consent. In December, 1705, another bill of the same tenor was presented to the governor, and received the same answer.³ The assembly replied that it had endeavored to make the bill conformable to the queen's order, and that an impartial view of it would establish the fact. The provincial attorney-general was thereupon requested to give his opinion. He declared that "in capital cases there was no power granted, or could be granted by the royal charter, to make a law by which a man should be tried for his life, but by a jury sworn according to the law of England." Then the governor, council and assembly held a conference. In the course of the discussion it was resolved that the governor and assembly were empowered to make a law that, in all cases, except where the acts of navigation required otherwise, an affirmation should have the force of an oath. It was urged that, when the at-

¹ *Col. Rec.*, ii, pp. 106-108.

² *Pa. Mag. Hist.*, ix, p. 393.

³ *Col. Rec.*, ii, pp. 170, 219.

torney-general of England had examined several laws of the province which had altered materially the English procedure in capital cases, he had not objected to them in point of law. Moreover, if those who were conscientiously opposed to taking an oath were excluded from jury duty, "it would prove a very great insecurity to the people; for in country places a grand and petty jury could not be made up without them, unless they should almost wholly consist of Swedes and other foreigners." The assembly claimed that the bill as offered gave liberty to all persons who could take an oath to receive it from a magistrate that could administer it. Those who could not take an oath were given the privilege of an affirmation. The governor objected that by the provisions of the bill an oath could not be administered in all cases, even if the party were willing to take it; because it was enacted that, where a magistrate could not administer an oath, the affirmation should be considered as equivalent; but the queen's order required that an oath should be administered to all persons who were willing to take it. The assembly replied that, since the province was inhabited chiefly by Quakers, who could neither take nor administer an oath, unless some of them were in the position of magistrates, suitable persons for that purpose could not be found. The fact that the queen's order allowed an affirmation to be as good a qualification of a magistrate as an oath seemed to imply this. But if the order should require "these persons to do what is certainly known beforehand they are incapable of, it would carry an incongruity with it which is not fit to be imagined of anything proceeding from the royal authority, and the consequence would be to remove out of office all those of that profession, or at least to incapacitate them * * * to discharge their duties therein." The practice in the courts, said the assembly, was that, if any judge on the bench could administer an oath, he did so. But the hardship lay in the fact that, if any offender were brought before a judge whose conscience would not allow a compliance with a request that any evidence should be sworn to, the queen's order

would make void the proceedings, and a failure in justice would result. The bill was designed therefore not to be displeasing to the ministry, or in opposition to the queen's order, "which was certainly intended to bring matters to a greater regularity, and not to involve the place in reason of its peculiar circumstances into the greatest perplexity." At length the governor decided to pass the bill, but with the amendment that it should not be in force till after a certain time, during which it might be presented to the queen or to the Board of Trade. The amendment was agreed to by the assembly, and the governor in January, 1705-6, assented to the measure under the title of "An act directing the qualifications of all magistrates and officers, as also the manner of giving evidence."¹ But at the same session a law entitled, "An act to ascertain the number of members of assembly, and to regulate the elections" was passed, which provided that every member of assembly, before entering upon his duties, should make the declaration of abjuration, allegiance, and supremacy, and the profession of faith as directed by 1 William III. chap., 18. The assembly then sent an address to the queen requesting her to confirm the acts.

What was the opinion of William Penn with regard to these proceedings of the crown and of the assembly? In a letter to James Logan, October 4, 1703, he wrote, "Why should you obey any order obtained by the Lords of Trade or otherwise which is not according to patent, or law here, or the laws in your own country which are to govern you until repealed? * * * If you will resign the laws, customs, and usages, tamely, instead of persisting till you see what becomes of the laws now with the attorney general, I cannot help it, but a decent refusal were wisest."² After the act of 1706 had been passed, Logan wrote to the proprietor, "Some fear thou wilt not favor it because it introduces the affirmation as by act of parliament, and takes notice of the queen's orders, but I am humbly of opinion that, if thyself were now here, and could

¹ *Col. Rec.*, ii, pp. 225-232.

² *Pa. Mag. Hist.*, ix, p. 401.

hear the same arguments that have been used, * * * thou wouldst be pleased to think nothing that is done in relation to it unadvisable. A less security than that affirmation among so very loose a people as in many places here shelter themselves under the name of a profession, would be very dangerous; and the compliment that is paid to the order can injure nothing, but serve for oil to make it go the more easy."² In another letter written shortly after, he stated that the members of the council who belonged to the Church of England voted against the bill. "However unfit," said he, "were that affirmation for Friends in England, yet here, where such a rotten or insensible generation shelter themselves under the name, there is a necessity for a greater security."² But the proprietor, although recognizing in some measure the necessity for the observance of the order and of the enactments of parliament, deplored the departure that had been made from his principles. "I am grieved," wrote he to Logan, "to think that you ever gave way to any other affirmation than that appointed by law in the province, by which you have given away a most tender point not easily recoverable. My regard to the queen is known almost to partiality, but I shall never obey her letters against laws into which she may be drawn by interested persons, or those that would make their court at other men's cost, and go upon private piques; but the great blower up of these coals, the Bishop of London, is himself under humiliations."³ Again, March 12, 1709, he wrote to Logan, "I do abhor the new affirmation, * * * and if I can I will waive it, for I would rather Friends were never in power, so our old affirmations were confirmed for Friends and others scrupulous, and oaths for the rest; unless a short way of bonds penalty for truth of what is said were made practicable and acceptable, as I have often thought might be."⁴

The opposition of the Episcopalians to the bill of 1706 con-

¹ *Penn and Logan Corresp.*, ii, p. 98.

² *Ibid.*, p. 187.

³ *Ibid.*, i, p. 278.

⁴ *Ibid.*, ii, p. 339.

tinued with great vigor. They sent a petition against it to the Bishop of London, who laid it before the Board of Trade.¹ The result was that the act was repealed by the crown. The attorney-general stated that his objections to the law were, in the first place, that it allowed a deposition in writing of a person who was sick, or about to leave the province, to be good evidence. He declared that such evidence, even in civil cases, was rarely accepted in the courts of England, nor even then without the observance of a much safer method than the act had provided, "such paper evidence having with great reason always been disallowed in criminal proceedings, because of the known benefit of cross-examining a witness." Secondly, as the provisions of the act were worded, any person who was willing to take an oath in a court of judicature, was not allowed to do so, if the court was composed entirely of Quaker judges. If there were others on the bench who were not Quakers, then the law enacted that the administering of an oath would be the act of an individual judge, and not of the court.² The assembly thereupon sent Gov. Gookin a bill of similar tenor. He refused to pass it. The house complained that his refusal rendered the people very insecure in their persons and estates. "For," it declared, "the greatest part of the people here being such as conscientiously scruple an oath, and their evidence upon affirmation in criminal cases being rejected, murder though never so notorious and barbarous being perpetrated in a crowd, if of Quakers only, or of such as are under the said scruple, may escape with impunity." The quarrels of this assembly with the governor on various matters, however, caused at the next election a complete change of members.³ A bill more agreeable to the governor's wishes was

¹ *Penn and Logan Corresp.*, ii, p. 253; *Mem. Pa. Hist. Soc.*, iv, pt. ii, p. 360.

² *Pa. Arch.*, 1st series, i, p. 156.

³ *Col. Rec.*, ii, pp. 513-516. It is probable that the letter from William Penn, quoted at the close of chapter iv, was also instrumental in causing this change in the membership of the assembly.

therefore enacted. It provided that persons who had conscientious scruples against taking an oath should be allowed to testify before the courts by solemnly promising to speak the truth. Magistrates and jurymen who had similar scruples could be qualified on their solemn affirmation to perform faithfully their duties, and any person who so wished might take an oath, or the form of affirmation in use in England, pursuant to the queen's order. False affirmation, however, should be punished the same way as perjury.¹ Two weeks later, March 14, 1711, the proprietor wrote to Gov. Gookin, "I am willing such an act should pass * * * that they shall think necessary for a fitting and requisite affirmation to be taken in evidence, and for qualifying officers, which I wish might be brought as near as may be to that passed in Col. Fletcher's time, and approved by the late king, but as 'tis absolutely necessary there should be some provision made in that case, which is not to be done here, nor anywhere but among themselves, it will be incumbent on thee to pass such a bill for that purpose as the house can agree to."² The request of course came too late. The governor probably could not have complied with it, and had he done so, his efforts would only have failed, because the act was repealed by the crown in 1713. The attorney-general declared that the affirmations provided for differed materially from those enjoined upon the Quakers by the acts of parliament. He also laid stress upon the fact that the name of God was not mentioned, and that, contrary to 7-8 William III, chap. 34, a Quaker was allowed to give evidence in criminal cases, to serve on juries, and to hold office.³

As before, this repeal of a law which guaranteed to the Quakers their privileges, or rather what they believed to be their privileges, occasioned considerable hardship to them, and introduced obstacles into the procedure of many

¹ *Col. Rec.*, ii, p. 529; Bradford, *Laws of Pa.*

² *Mem. Pa. Hist. Soc.*, iv, pt. i, p. 210.

³ *Pa. Arch.*, 1st series, i, p. 158.

of the courts. To remedy these defects, in March, 1715, the assembly sent to the governor a bill entitled, "An act directing an affirmation to those who for conscience sake cannot take an oath." The governor and council called the attention of the house to the fact that the bills for the establishment of courts of judicature, which it had recently submitted to the governor, and the laws of England required oaths to be taken and administered by those who were conscientiously free so to do. It was declared, moreover, that persons not of the Quaker persuasion were very dissatisfied with any form of affirmation that did not contain the name of God. Indeed, they had generally refused to act in conjunction with Quakers when such an affirmation was used. It was pointed out that the bill as presented was substantially a re-enactment of the law just repealed. Hence the governor doubted whether the administration of justice would be thereby properly supported.¹ The assembly then sent up another bill entitled, "An act for the ease of such as conscientiously scruple to take the solemn affirmation formerly allowed in Great Britain." But so great was the pressure brought to bear on the governor that he agreed to pass both acts. The preambles recited that, as William Penn and the greater part of the inhabitants, freeholders, and first settlers were Quakers who for conscience sake could neither take nor administer an oath, laws suitable for the better administration of justice had been made, but that, since the repeal of the last law, an entire failure of judicial proceedings had happened. As the majority of the inhabitants were, by their religious principles, opposed to taking or administering an oath, "if so considerable a number are left incapable of serving king and country, either in the administration of justice or in serving on juries, too great a burden will fall on those who can take and administer oaths." Hence it was enacted that the following affirmation in all cases should have the validity of an oath, viz., "I do solemnly de-

¹ *Col. Rec.*, ii, p. 580.

clare, in the presence of Almighty God, the witness of the truth of what I say." But there was no mention whatsoever of the power of taking or administering an oath.¹

About this time the acts 1 George I, st. 2, chap. 6 and chap. 13, sec. 4, were passed by parliament, which extended to the colonies for five years the preceding statutes. On October 18, 1716, the assembly sent to Gov. Gookin the following resolutions: "That the royal charter makes the acts of this province most absolute and available in law until repealed by the king. That the laws of this province now in force have sufficiently settled the qualifications of magistrates, officers, etc. That the act of the first of King George relating to the affirmation and declaration of the people called Quakers, etc., does not repeal or make void any of the laws of this province. That whosoever doth or shall persuade the governor to be of a contrary opinion, or to refuse the qualifying of persons pursuant to the said laws of this province, are enemies to the governor and government." The council immediately concurred with the opinion of the house.² But the governor held a different view. His motive may have been a sincere one. But the fact that he was not a Quaker, and that ever since the beginning of his administration he had been engaged in strife with assemblies composed almost entirely of Quakers, and usually headed by David Lloyd, may have impelled him to seize the opportunity to thwart his enemies. Furthermore, he was conscious of warm support from the members of the Church of England in the province.³ He believed that the laws of the

¹ Bradford, *Laws of Pa.*

² *Col. Rec.*, ii, p. 614.

³ So far did this antagonism between the Quakers and Episcopalians proceed, that strenuous efforts, even to the extent of open lawlessness, were made by the latter to persuade the governor that the courts of the province had no power to try a certain Church of England minister for gross immorality. The assembly told Gookin that cases, which in England and elsewhere might be triable only in ecclesiastical courts, were in Pennsylvania triable in the quarter sessions. It resolved therefore that, whoever should "assert or endeavor to incense or persuade the governor or any other that the court of quarter sessions * * * has no cognizance of

province had settled the qualifications of officers until the promulgation of the statutes. In this view he was supported by the judges of the supreme court. In response to the request of the assembly to state the reasons why they refused to try certain criminals, the judges said that a question had been raised, "whether, by extending to America the late act of parliament for the affirmation allowed to those called Quakers in Great Britain, all the exceptions in the said act are not also extended hither." Moreover, they declared, that, as the governor, from whose commissions their power were derived, held that the statute was so extended, they did not think it prudent "to proceed * * * in opposition to that opinion in so tender a point as the lives of his majesty's subjects."¹ The assembly then asked the governor to lay before it the authorities in law upon which he based his views; and asserted that, from the knowledge it possessed of opinions held by him, it would be useless to enter upon any business.² The governor replied, "I am not surprised at * * * your message. * * * I am given to understand that you did not design to make laws, nor raise money this session, but upon terms inconsistent with my duty and safety to comply with. It is not to be wondered at that the council should be of opinion with the assembly, since of four of which the council consisted, three of them are of the people called Quakers, and the other I suppose durst not dissent from them. I cannot recede from my opinion relating to the act of the first of King George, till I am

the said offences, are and shall be deemed enemies to the governor and government of this province." It requested Gookin to suppress any attempts to screen the offender from justice, and to cause the laws to be properly executed. In reply the governor promised to exert his authority to the fullest extent. *Ibid.*, pp. 598-9.

¹ The four judges of the supreme court were Joseph Growdon, William Trent, Jonathan Dickinson, and George Roche. Growdon was a Quaker, and of course did not sign this statement. The fact that the other three judges were not Quakers leaves room to suspect the sincerity of their motives.

² *Col Rec.*, ii, p. 615.

otherwise directed from home." Then the assembly sent the governor a long remonstrance in which the entire history of the question was reviewed. It rehearsed the views that were cherished by William Penn, referred to the charter of privileges, to the superiority of the Quakers in numbers, to the danger which threatened the administration of justice and execution of the laws; and commented on the arbitrary conduct of the governor in refusing to qualify officers, or to allow the prosecution of criminals. It also with great force urged that, as by the royal charter the laws of England concerning the descent of lands could be altered, so could those which provided for the taking of oaths be changed, if in the judgment of the legislature enactments for such a purpose were not contrary to the laws of England. "It is further to be considered" said the assembly, "that as the term *repugnant* always implies an absolute opposition or contrariety in matter, it cannot be said that an act of this province which enables those called Quakers to serve in office, upon juries, and to be evidences in all cases, the circumstances of the country requiring that it should be so, is contrary to an act of Great Britain, which enables them only to give evidence in civil cases. These two differ, it is true, and so it was certainly considered and expected at the time of the royal grant, that our acts might in some measure differ from those in England, otherwise those in England would suffice, and no such power for altering them needed to have been granted. On the contrary, the act of this province pursuant to the directions of that royal charter is as nearly agreeable as to our convenience may be to the statute provided for Quakers in Great Britain."¹ The question at issue thus was whether laws that had been passed by the legislature and not repealed by the crown could be subject to repeal by any statute of parliament. If this were admitted, the rights claimed by the Quakers would be in imminent danger. But the assembly could obtain no satisfaction

¹ *Col. Rec.*, ii, pp. 616-629.

from Gookin, who had begun to show symptoms of insanity. Thereupon it ordered a copy of the remonstrance to be sent to the proprietor.¹

Two years later, in 1718, the assembly enacted a law by which several penal statutes of England were extended to the province. In the law it was provided that "all * * * crimes and offenses, matters and causes whatsoever, to be inquired of, heard, tried, and determined by virtue of this or any other act or law of this province, or otherwise, shall be enquired of, heard, tried, and determined by judges, justices, inquests, and witnesses qualifying themselves according to their conscientious persuasions * * * either by taking a corporal oath, or by solemn affirmation allowed by act of parliament to those called Quakers in Great Britain. Which affirmation of such persons as conscientiously refuse to take an oath, shall be accounted and deemed in law to have the full effect of an oath in any case whatsoever." False affirmations should be liable to the penalties provided by the laws of England for perjury.² As this act was not repealed, the repeal by the crown, July 21, 1719, of the act of 1715, entitled "An act for the ease of such as conscientiously scruple to take the solemn affirmation formerly allowed in Great Britain," caused no comment.

At last, in 1724, the contest was settled by an act "prescribing the forms of the declaration of fidelity, abjuration, and affirmation, instead of the forms heretofore required in such cases." In the preamble it was declared that the British legislature in the act 8 George I., chap. 6, acknowledged that the Quakers had given ample testimony of their affection and fidelity to the crown, and to the settlement thereof in the Protestant line of succession, and had not abused the liberty and indulgence allowed by law. The forms of affirmation were then carefully specified, and it was provided that the act should not be construed to repeal the one of 1718. The English statute just mentioned was also expressly extended to the province. The

¹ *Votes*, ii, p. 208.

² *Charter and Laws of Pa.*, p. 372.

act should not be put into execution, however, until the pleasure of the king was known. The attorney-general offered no objections, and the act was ratified by the king in council, March 27, 1725.¹

For the benefit of Scotch Presbyterians and others who objected to kissing the book, in 1739, an act was passed to enable them to take the oath by merely repeating it. But the act was repealed by the crown, May 12, 1740. Religious scruples however continued to exist, and in 1772 it was enacted that persons who were opposed to laying the hand on or kissing the book might take an oath or affirmation according to their conscientious persuasion, or according to a form prescribed in the act.²

We have yet to notice the qualifications required of foreigners for admission to citizenship. We have seen that on his arrival William Penn naturalized the foreign born residents of the province and Lower Counties. By the act of naturalization passed at Chester in 1682 it was provided that alien freeholders, who within a given time should promise before the county court faith and allegiance to the king, and fidelity and lawful obedience to the proprietor, should become freemen of the province.³ This act was continued till 1700, when a law of like import, passed at Newcastle, repealed it. This in turn was repealed by the queen, because the royal charter had given no power to the proprietor to pass such a law.⁴ The acts subsequently passed by the assembly naturalized foreigners by name. Parliament, however, by the act 13 George II., chap. 7, declared that after June 11, 1740, all foreign born persons who had resided or who should reside in the colonies for seven years continuously, could become citizens by making the declarations provided for in 1 George I., chap. 13. If they were Quakers they might take the declaration of fidelity and the

¹ Bradford, *Laws of Pa.*

² Miller, *Laws of Pa.*

³ *Charter and Laws of Pa.*, p. 105.

⁴ Carey and Bioren, *Laws of Pa.*, vi, app., pp. 36, 50.

effect of the oath of abjuration as provided in 8 George I., chap. 6., and the profession of Christian belief as provided in 1 William III., chap. 18.

In 1743 the privileges of this act were extended by the assembly to all Protestants in the province. The antipathy to Catholics which prevailed in England, it will thus be seen, was cherished to some extent in Pennsylvania. The Episcopalians of course were bitter against them, while the broader-minded among the Quakers, even if they felt it, did not dare to show them any sympathy. The proprietors, also, in their instructions forbade the governor to allow them to settle in the province, or to purchase land for chapels or dwelling houses.¹ The time was not ripe for the acceptance of the great plea for liberty of conscience which William Penn introduced into the charter of liberties of 1701: "Because no people can be truly happy, though under the greatest enjoyment of civil liberties, if abridged of the freedom of their consciences as to their religious profession and worship; and Almighty God being only Lord of conscience, Father of lights and spirits, and the author, as well as object of all divine knowledge, faith, and worship, who only doth enlighten the mind and persuade and convince the understandings of people, I do hereby grant and declare that no person or persons inhabiting in this province or territories, who shall confess and acknowledge one Almighty God to be the creator, upholder, and ruler of the world, * * * and who professes him or herself obliged in conscience to live peaceably and quietly under the civil government, shall in any case be molested or prejudiced for his or her conscientious persuasion or practice. Nor shall he or she at any time be compelled to frequent or maintain any religious worship, place, or ministry * * * contrary to his or her mind, but shall freely and fully enjoy his or her Christian liberty in that respect, without any interruption or reflection."²

¹ Penn MSS., P. L. B., ii, T. P. to R. Hockley and Tench Francis, Feb., 26, 1743; viii, to John Penn, May 10, 1765.

² *Charter and Laws of Pa.*, p. 107; *Col. Rec.*, ii, p. 57.

CHAPTER VIII.

THE ESTABLISHMENT OF COURTS OF JUDICATURE

It will be recalled that the royal charter gave the proprietor or his lieutenants the right to appoint judges, and to endow them with such powers as might appear to him suitable. He was authorized also to establish courts and to determine their procedure. These facts at once show that, whatever may have been the powers claimed and exercised by the assembly, the appointment of judges, and the establishment of courts were prerogatives of the proprietor. Hence, the constituting of courts, and the outlining of their procedure by law were privileges of the assembly dependent upon the acquiescence of the proprietor, and not incident to the general power of legislation. In this connection we have already noticed that, by the first and second frames of government, the proprietor vested in the governor and council the right to establish courts. To the council he gave the privilege of nominating a double number of persons to serve as judges, while to the assembly he gave the right to nominate a double number of persons to serve as justices of the peace. From those presented in this way he or his deputy should make the appointments. The tenure of office was during the good behavior of the incumbent.¹ The second frame of government, however, provided that the absolute power of appointment should remain in the hands of the proprietor during his lifetime. But he or his deputies exercised the power generally in accordance with the advice of the council. The commissions issued were in the name of William Penn as proprietor.²

¹*Col. Rec.*, i, pp. 35, 36, 45.

²*Charter and Laws of Pa.*, p. 298.

The code adopted by the assembly at Chester, in December 1682, made no provision for the trial of capital offenses, or for the hearing of appeals. These defects were provided for the following year by laws which fixed the method of procedure in criminal cases, and allowed appeals to the governor and council from the county courts which had already been established.¹ But the county courts were not given jurisdiction over capital crimes, this being a function of the governor and council. This continued to be the procedure till 1684, when a provincial court composed of five judges was established by law. The court was to sit twice a year at Philadelphia, and to go on circuit the same number of times. It was empowered to hear appeals from the county courts, and to try cases of titles to land, as well as other matters civil and criminal, both in law and equity, which were not determinable by the county courts. At the same time it was enacted that the justices of the peace should sit in monthly and quarterly sessions, and that each quarter sessions should be a court of equity as well as of law.²

As it was feared that, on account of "inadvertency, indiscretion, or unskillfulness," the judges might cause confusion by intrenching on their respective jurisdictions, the council drew up and sent to them instructions defining their powers.³

But the following year the procedure was changed. It appears that the provincial judges and the inhabitants of the counties, by their attendance at court had been put to considerable trouble and expense. Since it was believed that the county courts were better fitted to judge of actions that arose within their territorial jurisdiction, it was enacted that they should be empowered to try all cases, except heinous crimes, which were to be tried in the county where committed by three judges specially commissioned by the governor and council. These judges were also empowered to

¹ *Charter and Laws of Pa.*, pp. 129, 144, 164.

² *Ibid.*, pp. 167, 168.

³ *Col. Rec.*, i, p. 124.

hear appeals from the county courts.¹ Still the dissatisfaction continued. Some of the judges appointed were unwilling to serve. Others refused to sign a judgment awarded by them. They were also careless in the discharge of their duties. All this may in some measure be explained by the fact that the compensation they received was inadequate to the dignity of the office, and that they found it more profitable to attend to their private affairs than to serve the public for the empty honor. Complaints of the failure of justice reached the ears of the proprietor. He thereupon sent the council a letter of censure, calling its attention to the fact that the laws were too frequently and notoriously transgressed. In response to this the council resolved that the justices of each county should be ordered to "encourage, quicken, and require the due execution" of the laws.² This, however, does not seem to have had much effect, for the council and provincial court soon fell into a disagreement. There was also a hitch about sealing the commissions of the judges.³ Hence in 1688, when Blackwell assumed the governorship, he found the courts in great confusion. By the law of 1684 the judges of the provincial court were to be commissioned under the great seal, while that of 1685 provided that they should be appointed by the governor and council. The latter enactment, said Blackwell, was an encroachment on the powers of the proprietor to appoint and commission all officers, and was directly opposed to the instructions that Penn, in February, 1687, had given to the council.⁴ Thereupon it was resolved by that body that the law of 1684 should be re-enacted. But Thomas Lloyd, keeper of the great seal, did not deem the commissions for the provincial judges as ordered by the governor and council to be proper for the seal, and thought that they were "more moulded by fancy than formed by law." He believed also that the "style was insecure, the powers unwarrantable," and the length of

¹ *Charter and Laws of Pa.*, p. 178.

² *Col. Rec.*, i, p. 199.

³ *Ibid.*, p. 227.

⁴ *Charter and Laws of Pa.*, p. 514.

the tenure of the judges not "consonant to the continuance of the laws upon which it should be grounded."¹ Though the council declared that Lloyd was guilty of a serious misdemeanor, its support of the governor was so half-hearted that Lloyd triumphed in his obstinacy. The commissions, accordingly, were issued under the lesser seal.²

In 1690, an act similar to that of 1684 was passed. But in order to guard against arbitrary refusal on the part of a county court to grant appeals to the provincial court in law and equity, it was enacted by this measure that an appeal should be granted in cases involving £10 or more, provided the appellant gave good security to prosecute it. A similar law was passed in 1693.³

It was not until after the passage of the law of 1701 that the provincial court and the other tribunals were firmly established, and their jurisdiction defined. By the charter of privileges of that year, the proprietor had resumed the power of direct appointment. Hence it was enacted that a suitable number of justices of the peace should be commissioned by the proprietor or his lieutenant, under the great seal, to hold quarter sessions in each county. They were empowered to deliver the jails, to award process, and to hold all pleas of the crown. In civil cases their method of procedure should be modeled after that of the court of common pleas in England. They should hold orphans' courts. They were given jurisdiction over maritime cases which were not properly cognizable by the courts of admiralty. They were also authorized to hear cases in equity. But an appeal lay from their decision to a provincial court of five judges appointed by the proprietor, or deputy governor. This court was also given authority over criminal cases of a grave nature. Final appeal to the crown was allowed, but only in case the appellant deposited the sum decreed against him, or gave a bond of double the sum, and on condition

¹ *Col. Rec.*, i, p. 250.

² *Ibid.*, pp. 253, 255, 256, 296.

³ *Charter and Laws of Pa.*, pp. 184, 225.

that within one year he should prosecute the appeal in England.¹ The procedure of each court, further, was carefully defined, all former laws relating to the courts were repealed, and the right of the proprietor to establish manorial courts was expressly recognized.

The repeal of this law by the queen in council, February 7, 1705, left the administration of justice in a chaotic state. Gov. Evans and the assembly then entered upon a contest of great length and bitterness. In May 1705 and in January 1706, the governor had recommended a law for the establishment of courts,² but the assembly refused to consider the matter. Accordingly in September of the latter year, on his order, a bill for the purpose was drawn up by "some of the practitioners in the courts," and sent to the assembly. In reply the house resolved that the governor and a part of the council might be empowered to hold a court of equity, provided it did not interfere with matters wherein sufficient remedy might be had in any other court, either by the rules of the common law or by the laws of the province. The governor might also issue special commissions of oyer and terminer to try capital crimes. A supreme or provincial court consisting of a chief justice and two or more associates should try cases brought up from inferior courts on writs of error, habeas corpus, and certiorari. The constitution of the county courts should be the same as that indicated in the law just repealed; and, with the exception of cases carried to the provincial court on writs of error, the powers of the mayor's court in Philadelphia should not be impaired.³

¹ At a conference held with Lord Bellomont and Gov. Nicholson at New York, in December, 1700, the proprietor had suggested that, in order to prevent vexatious and litigious practices, no appeal to England should be allowed in cases involving less than £300. *N. Y. Col. Doc.*, iv, p. 757.

² *Col. Rec.*, ii, pp. 188, 222.

³ Ever since the incorporation of Philadelphia in 1701, controversy as to the limits of their respective jurisdictions had existed between the city and county judges. *Penn and Logan Corresp.*, i, p. 139.

The governor and council decided to offer the following additions. Since the assembly would not agree to the creation of a provincial court of general jurisdiction, "provision should be made for the relief of the subject when he dares not put himself upon that particular county where the action is commenced, [in order] that he may have a trial by such as he can better depend on to be unbiased and unprejudiced in his case." The power of executing the judgments of the courts should be extended from one county into another. In cases removed to the provincial court by writs of habeas corpus or certiorari, after it had rendered a decision a further appeal should lie to the governor and council before a final appeal was made to the crown. Former process should be continued. Nothing should be done to abridge the right of the proprietor to erect manorial courts. Lastly, the decisions of the city court of Philadelphia should be subject to appeal as fully as those of other courts.¹ The assembly was unwilling to allow the provincial court any original jurisdiction except over capital crimes. It stated that the point of greatest difficulty was that members of assembly from other counties could not be induced to agree that cases should be brought from those counties and determined in Philadelphia. The council replied that its purpose was not to remove causes from the other counties to Philadelphia, but that in general and common law jurisdiction all proceedings of court should be regular and uniform. To this end the jurisdiction of the provincial court should be extended equally over the entire province. Whereas now it had the consideration merely of civil cases upon writs of error in matters of law, its usefulness would be increased if it had cognizance of more causes. The council declared that any cause, either before or after trial in the county courts, might be brought into the provincial court or first entered there, according to the option of the plaintiff.² With this opinion the assembly would not agree, and a few days later informed the

¹ *Col. Rec.*, ii, pp. 254-255.

² *Ibid.*, pp. 256, 257.

governor that, although it was "well satisfied that he had a full power to establish * * * courts by an ordinance, yet that for the satisfaction of the country where the courts had always been hitherto held by a law," he was requested to refer the matter to the next assembly.¹ Thereupon the council drew up a bill. It provided that in every county courts of quarter sessions should be established to try all causes except capital crimes, and that for the trial of these commissions of oyer and terminer should be issued to the provincial judges or to other persons, as the governor might see fit. A provincial court, consisting of a chief justice and associate judges, should be created. Its fixed sessions were to be held at Philadelphia, and it should go on circuit into the other counties twice a year. All civil actions involving £10 or more might be commenced in it, or in the county court, according to the option of the plaintiff. "All matters entered in the county courts, except civil causes under the value of £10, may be removed out of the said courts into the provincial by habeas corpus or certiorari before trial, or by writ of error after trial." Writs of execution and subpoenas should extend over the entire province. Finally, the governor and council should be a court of equity for all cases. The governor then requested the assembly to consider the bill, and to make provision for the salary of the chief justice.² In reply the assembly sent up a long and tedious bill of its own, which differed widely from the suggestions made by the council, and contained many extraordinary provisions that the governor refused to entertain. He criticised its strong similarity to the act just repealed by the queen. He declared that the clause providing for a supreme court of three judges, any one of whom might try appeals in law or equity, would require persons skilled in the law. If one could do this, said the governor, what was the necessity of having three, especially since the small salary offered by the assembly would not

¹ *Col. Rec.*, ii, p. 258.

² *Ibid.*, pp. 258, 259.

induce competent men to serve? Furthermore, the bill enacted that the provincial judges should be empowered to grant remedial writs; but provision was made for no writ to remove a cause from an inferior court before judgment, except the writ of error. The governor agreed that under a writ of error not the justice of the cause, but the regularity of the proceedings was considered. The reversal of judgment by this process merely placed the parties in the same condition they were in before trial. It was against common justice, said he, to oblige a free subject to be tried by one particular court which might be prejudiced against him. He thought it was not advisable to specify minutely the powers and procedure of the court, but to give it the jurisdiction of the court of king's bench and common pleas in England. He asserted that the proprietor had the right to appoint and dismiss all officers, and in no instance should that right be usurped. The governor and council should be the highest court of equity, unless commissioners were specially appointed for the purpose. Certain matters mentioned in the bill he thought should be regulated by the rules of court. The granting of tavern licenses was a perquisite belonging to the governor, and should not be given to the justices. Fines and forfeitures were the property of the proprietor. He objected further to the powers entrusted to the city court, insuring it against interference by the county court. He also thought it was unreasonable that a county court, which had tried a case in law, should be allowed to hear it again in equity. At the same time he threatened that, unless the assembly offered a bill modeled on the lines indicated in the one prepared by the council, he would establish the courts by ordinance.¹ In its reply the assembly denied the right of the governor to establish courts by ordinance without its consent. It stated that its bill was based on the common and statute law of England. It was willing that the provincial court should try

¹ *Col. Rec.*, ii, pp. 261-266.

causes duly removed from the county courts, as well as matters of error and appeals in equity. It acknowledged the difficulty of obtaining judges who were skilled in law; but it declared that, if the necessity should arise, provision for a larger salary would be made.¹ It agreed that the procedure in England for the removal of causes by writ from inferior courts should be followed. It preferred that the duties of the judges should be enumerated, and that the practice of the courts should be settled by law. It insisted that, at the request of the assembly, judges should be removed for misbehavior. The council, it thought, should consult the public honor, safety, and good of the province, and leave private cases to the proper judges. It declared that the justices should have the power of granting tavern licenses, and that the appropriation of fines to pay the justices was warranted by the statute law of England and the usage of other colonies. "We are very sensible," declared the assembly, "of what is granted the proprietor by the said royal charter, yet we are of opinion that the appointing of fines and forfeitures to the queen does not take away the right of the proprietary or others to whom he granted fines and forfeitures to claim and to have them; but we would avoid our superiors' objection on that account, which have proved very fatal to some of our laws." It stated that judges of the common law were permitted by an act of parliament to judge in equity in the same session, and that a

¹ In a letter dated October 3, 1704, to several enemies of William Penn, David Lloyd wrote: "If there were an able counsellor at law, that were a person of sobriety and moderation, but not in William Penn's interest, commissioned by the queen to be judge of the province and Lower Counties, as also of the Jerseys, * * * I doubt not but his place may be worth 4 or 500 per annum, besides fees and perquisites; and the business * * * may be easily performed by one chief judge with certain associates. * * * I desire you may use your endeavors to get such a man. Here was one Roger Mompesson, who we thought to engage in that affair, but he being judge of the admiralty, and chief judge of the supreme court at New York, could not stay here. Besides, he was too much in William Penn's interest, and given to drink, so that he did not suit this place." *Penn and Logan Corresp.*, i, pp. 328-9.

clause in the bill it had offered provided that the judges in equity should not take cognizance of matters of law.¹ Finally, it threatened that, if the governor issued any ordinance without its advice and consent, it would take measures for its own vindication, and to discharge the trust reposed in it.²

But the governor refused to depart from his former position, or in any way to give up the rights of the proprietor;³ and criticised the assembly for its attempts to gain privileges unwarranted by either the royal charter or the charter of privileges.⁴ He held several conferences with that body at which the tenure of the judges was the chief subject of consideration. He claimed that for judges to be removed merely by an address from the assembly to the governor was dangerous in tendency, especially as the control of their salary by the popular body would necessarily make them dependent upon it. He urged that the salaries should be definitely specified in the bill, and stated his willingness under this stipulation to appoint judges who might be subject to removal

¹ As early as 1685 complaint had arisen about the power of judges who had heard a case in law to try it again in equity (*Col. Rec.*, i, p. 127). In 1687 the assembly requested information from the council as to "how far the county quarter sessions may be judges of equity, as well as law, and if, after a judgment in law, whether the same court hath power to resolve itself into a court of equity and either mitigate, alter, or reverse the said judgment." (*Ibid.*, p. 205.) The council did not believe that the judges had any such power (*Votes*, i, pt. i, p. 41), but the act of 1690 gave full powers, both in law and equity, to the county judges. In 1694, among a list of grievances submitted by the assembly to Lieut. Gov. Markham, was the following: "The late law for appeals (passed in 1693, *Charter and Laws of Pa.*, p. 225), which gives liberty to appeal to the provincial court both in law and equity, upon one and the same case, whereby the judges have too great liberty to destroy or make void the verdicts of juries." The lieutenant governor was then desired to caution the judges not to decree anything in equity which might lead to such a result. (*Votes*, i, pt. i, p. 78-79; *Col. Rec.*, i, p. 457.) As the wording of the acts of 1690 and 1693 was precisely the same, this contention of the assembly seems based rather on the character of the individual judges, than on any distinction which might be drawn between jurisdiction in law and equity.

² *Col. Rec.*, ii, pp. 267-270.

³ *Ibid.*, p. 271, 273, 280, 285.

⁴ *Ibid.*, pp. 287, 306-7.

at the request of the assembly.¹ But his efforts to effect an agreement met with no favorable response. The assembly drew up articles of impeachment against James Logan, whose influence in the council at that time was very strong. In fourteen articles it accused him of a number of crimes and misdemeanors, and thereby gave David Lloyd the opportunity to vent on him his personal malice.² But on the ground that no middle body, with power like that of an upper house to sit in judgment upon impeachment, existed in the province, the governor refused to try the charges.³ Indeed, he declared that the proceedings of the assembly ever since the beginning of the century, would seem to indicate on its part a purpose to "reverse the method of government" according to the English constitution, and to "establish one more nearly resembling a republic in its stead."⁴

Thereupon, February 22, 1707, he issued an ordinance to establish courts. It was stated that the assembly had refused to present any bill to which the discharge of his duty to the queen and to the proprietor would allow the governor to assent. Hence, by virtue of the powers enumerated in the royal charter, it was ordained that a supreme or provincial court consisting of a chief justice and two associates, should be held semi-annually in each county. These judges, or any one of them, should be empowered to hear all cases removed

¹ *Col. Rec.*, ii, pp. 312, 313, 324.

² On this point Benjamin Franklin (*Works* iii, p. 184), says, "Against Logan, the proprietary's minister, stand upon record still unanswered thirteen articles of malversation, by way of impeachment." As to the truth of this assertion it may be said that the articles of impeachment were completely and triumphantly refuted. Franklin moreover omits to state that, in November 1709, the assembly called upon Logan to answer the articles on the very day of his embarking for Europe, and that Lloyd, in the name of the assembly, ordered the sheriff to arrest him. Gov. Gookin then issued to the sheriff a *supersedeas* to release Logan. For a full account of the whole proceedings, see *Penn and Logan Corresp.*, ii, pp. 360-390, 402-418. See also *Col. Rec.*, ii, pp. 496-502, 507-8.

³ *Col. Rec.*, ii, pp. 277-279, 345-7, 353-6, 365-379.

⁴ *Ibid.*, p. 325.

by any remedial writs from the courts of quarter sessions or common pleas in the counties, and from the city court of Philadelphia. They should examine and correct all errors in the judgment of inferior courts, punish officers for misdemeanors, and generally administer "common justice, to all persons * * * as fully and amply to all intents and purposes whatsoever as the justices of the court of queen's bench, common pleas and exchequer at Westminster may or can do." They were also authorized to try cases in equity on appeal from the inferior courts. Moreover, the county judges were empowered to hold general sessions of the peace and jail delivery, as well as courts of common pleas. They should hear and determine all cases "as near as conveniently may be to the laws of England, and according to the laws and usages" of the province. When holding the courts of common pleas, however, the justices were to imitate, so far as possible, the procedure of the common pleas in England, but with due regard also to the procedure of former county courts. The same justices were also authorized to hold courts of equity, "observing as near as may be, the practice and proceedings of the high court of chancery in England," while for the trial of capital crimes, special commissions of oyer and terminer should be issued.¹ The tendency of the assembly to depart from the procedure of the English courts, and even that observed in the other colonies, was thus given by the governor a temporary check.

A few days later the assembly sent him a long remonstrance. It believed that the powers given by the royal charter to the proprietor or his lieutenant related merely to the appointment of judges, and "to the forms of their judicatures, and manner of proceedings," and left the "jurisdictions and proceedings themselves to be supported and directed by a law." It called the governor's attention to the words of the ordinance power given by the charter, in that no ordinance could be extended "to bind, charge, or take away the right or

¹ *Charter and Laws of Pa.*, pp. 319-323.

interest of any person, or persons, for or in their life, members, freehold, goods, or chattels." It claimed that the establishment of the courts by the governor's ordinance was in direct contradiction to the charter. It protested that neither the proprietor, nor Gov. Fletcher, had attempted to establish courts without the consent of the assembly. Finally, it declared in the most express terms that the governor had no right to establish the courts without the approbation of the assembly, and that his manifest duty was to assent to the law for that purpose, which it had so frequently offered him.¹ No compromise could be effected, however, and the ordinance continued in force till the close of Gov. Evans' administration, in February, 1708-9.

By a proclamation dated the 28th of the same month, Gov. Gookin declared that all ordinances and commissions that were in force the first day of February, should remain in full force until his further pleasure therein was known; and all magistrates and officers were commanded to proceed diligently in the discharge of their respective duties. This continued the ordinance of Evans, and a contest similar to the one previously outlined began between Gookin and the assembly.² But the concession of certain points on both sides led to the passage, in 1710-11, of an act establishing courts of judicature, which, with certain modifications, was the same as the bill proposed by the assembly of 1706. The number of judges in the supreme court was increased to four. The court was empowered to issue remedial writs. The proprietor was deprived of fines and forfeitures, but it was provided that certain forfeitures should go to the governor. The clerk of the court should be nominated by the judges and commissioned by the governor. No suits under the value of £10 should be removed to it from inferior courts, except by writ of error. Furthermore, the judges of the supreme court should hear cases in equity from inferior courts. Appeals to the crown were allowed upon the deposit of sufficient security by the appellant that, within eighteen

¹ *Col. Rec.*, ii, pp. 349-353.

² *Ibid.*, pp. 519, 522-4, 526-9.

months, he would prosecute his suit in England. Courts of quarter sessions and common pleas were also established. It was provided that their powers should be as ample as those of similar courts in England, but due regard should be paid to the laws and constitution of the province. The same justices of the court of common pleas also should hold courts of equity; but they were forbidden to decree in equity any cause wherein sufficient remedy might be had in any other court, either by the rules of the common law, or according to the laws of the province. Hence, when matters determinable at common law were brought before them in equity, they should refer the parties to the common law, and when during proceedings in equity matters of fact happened to arise, the justices, before they proceeded to make any sentence or decree, should order them to be tried in the next regular court of common pleas. Moreover, nothing contained in the law should "deprive or abridge the mayor, recorder or aldermen of the city of Philadelphia of any powers, privileges, jurisdiction, or franchises granted them by charter," or by the laws of the province. The procedure of each court and the duties of many of its officers were carefully defined. Lastly, the statutes 8 and 9, William III, chap. 11, entitled, "An act for the better preventing frivolous and vexatious suits," should be extended to the province, so far as circumstances would admit; while the statutes of jeofails, of 23 Henry VI, chap. 10, concerning bail, 8 and 9 William III, concerning co-partnership and joint-tenancy, and of 4 and 5 Anne, chap. 16, entitled "An act for the amending of the law and better advancement of justice," were either wholly or in part extended to the province.¹

This law continued in force till February 20, 1713-14, when it was repealed by the queen in council. The reasons for its repeal, as offered by the attorney general, were the following: The duties of the supreme court seemed only to draw business from other courts by certiorari and other writs, a fact that

¹*Charter and Laws of Pa.*, pp. 323-344.

would only multiply suits and make proceedings at law dilatory and expensive. He characterized the procedure as useless. The expression, "so far as circumstances can admit," in the clause which provided for the extension of 8 and 9 William III, chap. 11, he thought was improper. He declared also that the clause which forbade judges in equity to try anything determinable at common law, or any fact arising in the course of proceedings, but to send it to an issue at law, would make proceedings in equity dilatory and multiply suits at law.¹

On July 20, 1714, the law was replaced by an ordinance issued by Gov. Gookin. Its provisions in general were similar to those in the ordinance of his predecessor.² But the assembly protested against the execution of the ordinance, and requested that in its stead a simple "declaration, or other public instrument," might be issued, directing the courts to be held at the usual times and places, and continuing the pleas and process then depending.³ The result of the discussion was a passive acquiescence on the part of the assembly, and the ordinance remained in operation until superseded by the act of 1715. In January of that year, the repealed act was read in part. A number of changes were proposed—among others that the powers of magistrates be specified in a bill "distinct by itself, and the practice in another; that matters of equity shall begin originally in the provincial court, that the clauses for general quarter sessions and county courts of common pleas be put in separate bills,"⁴ etc. On the 28th of May the governor gave his assent to the following, viz: "an act for establishing the courts of general quarter sessions; an act for erecting a supreme or provincial court of law and equity; an act for establishing the several courts of common pleas; an act for the better ascertaining the practice of the courts of judicature; and an act directing appeals to Great

¹ *Pa. Arch.*, 1st series, i, p. 158.

² *Charter and Laws of Pa.*, p. 351.

³ *Col. Rec.*, ii, pp. 524, 571-573.

⁴ *Ibid.*, pp. 578-585, 595.

Britain." The only significant changes, when compared with the act of 1710, are to be found in the provisions of the second law. Here it was enacted that the sessions of the supreme court should be held semi-annually at Philadelphia; that it should have original jurisdiction both in law and equity; that its powers should be as ample as those of the court of king's bench, common pleas, and exchequer at Westminster; and that it should be given the authority to try capital crimes in the counties where they were committed.¹ With the exception of the law concerning appeals to the crown,² every one of these acts was repealed by the king in council, July 21, 1719.

A little more than a year before the repeal of these laws, a

¹ *Charter and Laws of Pa.*, pp. 355-371.

² We have seen that in earlier times no certain rules were established by legislative enactment relative to appeals to the tribunal of final resort in Great Britain. The first definite reference to the subject was in the commission of William and Mary to Gov. Fletcher, wherein it was provided that, if either party were dissatisfied with the judgment or sentence of the superior court, they might appeal to the Privy Council in case the matter in difference exceeded £300 in value, security being given by the appellant. It is doubtful whether the act of 1715, which in phraseology was similar to its predecessors of 1701 and 1710, and which mentioned no limit of money value, was satisfactory, for the king found occasion to complain of irregularity in the granting of appeals, not only in Pennsylvania, but in the other colonies. Hence, March 23, 1727, he issued the following instructions: "Whereas, upon appeals which have been made to us in our Privy Council in cases of error from the courts in several of our colonies and plantations in America, in civil causes great inconveniences have frequently arisen by the immediate issuing of executions, notwithstanding such appeal unto us, where the appellee has become insolvent, or hath withdrawn himself and his effects from such colony or plantation before our pleasure could be known on such appeal. And our orders for reversing the orders and decrees appealed from, and for making restitution of the estates or effects which have been so levied in execution, have been rendered ineffectual and the appellant left without any redress. Now, for preventing the like mischief for the future, it is our will and pleasure that execution be suspended until the final determination of such appeal, unless good and sufficient security be given by the appellee to make ample restitution of all the appellant shall have lost by means of such judgment or decree, in case upon the determination of such appeal, such decree or judgment should be reversed, and restitution awarded to the appellant." *Ibid.*, p. 395.

dispute concerning the form of commissions to judges arose between Gov. Keith and the council. For several years since the return of the proprietor to England the commissions had been issued merely in the name of the lieutenant-governor. Keith wished to issue commissions to the judges in the name of the king, and attested by the governor. He based his contention on the statute 27 Henry VIII, chap. 24, which deprived the Bishop of Durham of the power of appointing judges, and vested it in the crown. In his discussion with the council he argued that the king could not grant away any part of his prerogative which was essential to the preservation of the allegiance of the subject, and which the common and statute law of England asserted to be the rights of the king's majesty. He declared that, by the laws of the province, process was issued in the king's name. The proprietor, he thought, was given merely the power to name the judges. Otherwise, all judicial proceedings would be subject to exceptions, the magistracy would become blamable, if not contemptible, and the right of the proprietor to appoint officers might be impaired. In reply, the council stated that the difficulty had arisen in not distinguishing the difference between England and "new colonies made without the verge of the ancient laws of that kingdom." As the king could give power to subjects to transport themselves to the dominion of other princes, where they would not be subject to the laws of England, so he might allow them to go to any foreign country upon any conditions he might choose to prescribe. Furthermore, since the native Indians, who inhabited these newly discovered American lands, were not subject to the laws of England, "those laws must by some regular method be extended to them, for they cannot be supposed of their own nature to accompany the people into these tracts in America," any more than into any other foreign place. The king by his charter had given the proprietor and the people full power to enact laws not repugnant to those of England, but "without extending any other than such as were judged

absolutely necessary for the people's peace and common safety, till such time as they should think fit to alter them." Also the king in reserving his sovereignty had declared that they should continue to be his subjects, and that he was still their natural prince. But his prerogative as exercised in England, "which in some measure is a part of the law and constitution of England, can no more be understood to accompany the sovereignty, than all the other laws can." By virtue of the royal charter, the proprietor "has, by his charter to the people of this province, appointed the election and meeting of assemblies, as also the election of sheriffs and coroners (who in Great Britain are the immediate officers of the crown), in a manner wholly inconsistent with the royal prerogative in England, and this method being further enacted into a law, it has passed the royal assent which is a full proof of the crown's approbation of it. In the same manner the proprietor might have granted the appointment of judges and justices, without any commission from himself or his lieutenant, which would have put this matter in debate out of question." Other proprietary governments, said the council, have granted commissions in the names of the proprietors alone, and have not been questioned for it. There was no necessity, therefore, that such an innovation should be introduced into Pennsylvania. The fact that the writs were issued in the king's name was only an accident, yet as writs were part of the practice of the English law, it was thought proper to employ them in the courts in the usual form. This implied no necessity "that commissions should run in the same [way]" * * * since they being a delegated power from the proprietor and his lieutenants, might "justly bear the name of him in whom the power of granting them is principally lodged." Perceiving that the council was firm in its opinion, Keith agreed that the commissions should be issued in the name of the proprietor, and attested by himself. But at the death of William Penn, in 1718, the commissions were issued in the

king's name.¹ This continued to be the case until the assumption of control by his sons, at which time the commissions issued were in their names as proprietors.

By an act passed in May, 1718, a new era was opened in the administration of penal justice. It seems that several persons in the province had sent to Great Britain complaints that the trial of criminals was conducted without the use of oaths.² The assembly thereupon requested Gov. Keith to favor it with his opinion as to the wisdom of extending to Pennsylvania such statutes of England as might under the present circumstances be suitable to supply defects in the laws of the province. In accordance with his views it was resolved that a bill should be brought in "to put in practice here such statutes of England as the circumstances of this place hath occasion for, and that reference be made to the said statutes." David Lloyd was ordered to draw up the bill. Then an address was prepared by Keith and the assembly and sent to the king. It

¹ *Col. Rec.*, iii, pp. 33-36, 62.

² Certain condemned murderers, by a petition to Gov. Keith, had appealed to the king in council. They stated that seventeen of the grand jury and eight of the petty jury were persons qualified only by affirmation. They claimed that the act of assembly by which judges, jury, and witnesses pretended to be qualified, was passed after the supposed crime had been committed, and after another act of the same tenor had been repealed by the crown. They declared that this act of assembly was not consonant to reason, and was repugnant to the laws of England. They therefore asked the king to do them justice according to the laws and customs of Great Britain. The governor and council in reply criticised the indolence of the preceding administration in not having brought the criminals to justice. They asserted that the appellants had boasted that "it was not in the power of the government to try any capital crime according to the common and statute laws of England, which they would claim as their right." The governor and council furthermore declared that the criminals had had a fair trial, and that great care had been taken to make the proceedings conformable to the laws of England, as well as to those of the province. The crown had granted to the proprietor and his lieutenants full powers of government, and in the present instance there was no reason for questioning them. It would be absurd for a condemned person, without regard to fact or circumstance, to make use of the right of appeal, when and where he pleased, in order to extort a reprieve from the execution of a just sentence. Hence the petition was denied. *Ibid.*, pp. 40-42.

stated that the persecution of the Protestant dissenters in England had induced the early settlers to emigrate to Pennsylvania in order that they might enjoy liberty of conscience. The people of the province had endeavored to exercise the powers of government in a manner most satisfactory to the ministry and to the crown. "For this end," said the assembly, "we have labored, more especially of late, to regulate the proceedings in our courts of judicature, as near as possible could be done, to the constitution and practice of the laws of England." The address declared, finally, that the fact that pirates and other "loose, vagrant people" were "crowding in to shelter themselves under the peaceable administration" of Pennsylvania, and the necessity of punishing the infraction of the laws made needful the use of affirmations as well as of oaths, without which judges, juries and evidence could not be satisfactorily obtained.¹ Indeed, it is quite probable that the privileges acquired by the clause of the act which provided for the use of affirmations equivalent to oaths, was the inducement for adopting the sanguinary rigor of the English penal law, in violation of the humane policy which had hitherto been followed in the province. For, in contrast to the criminal code of the other colonies, up to this time murder had been the only capital crime in Pennsylvania. Indeed, there seems a melancholy significance about the fact that, as the life of William Penn, whose legislation marked by justice tempered with mercy,² has been the admiration of the civilized world, was slowly ebbing away, his cherished ideals of humanitarianism were being ruthlessly destroyed and replaced by the gloomy severity of the Middle Ages. But with the addition of death penalties for counterfeiting bills of credit and current coin, this law continued in force until the adoption of a revised penal code after the Revolution.³

¹ *Votes*, ii, pp. 233-236.

² These were the words inscribed on his coat of arms. *Charter and Laws of Pa.*, p. 80.

³ Dallas, *Laws of Pa.*, i, p. 134.

In the preamble is recited the provision of the royal charter, that the English laws of felony should be in force in Pennsylvania until altered by the proprietor and freemen. "Whereas," continues the preamble, "it is a settled point that, as the common law is the birthright of English subjects, so it ought to be their rule in British dominions; but acts of parliament have been adjudged not to extend to these plantations, unless they are particularly named in such acts. Now forasmuch as some persons have been encouraged to transgress certain statutes against capital crimes and other enormities, because those statutes have not been hitherto fully extended to this province," it was enacted that high treason, murder, robbery, mayhem, witchcraft,¹ arson, and six other crimes should be made capital, and fines, whipping, branding, and imprisonment were provided for lesser offences. The procedure of English courts should be observed in the trial of criminals, and the following statutes were expressly extended to the province, viz.: 1 James I., chaps. 8 and 12, 2 and 3 Edward VI., chap. 24, and 5 Elizabeth, chap. 9.²

The repeal of the laws of 1715 relative to the jurisdiction of

¹ In 1683 one Margaret Matson was accused of witchcraft. It was stated at the trial before Penn and the council that she had bewitched several cattle. One witness declared that on a certain night she had appeared in a room in the midst of a great light, with a knife in her hand, and had "cried out and desired John Symcock to take away his calves, or else she would send them to hell." Another witness asserted that when "her husband took a heart of a calf that died, as they thought, by witchcraft, and boiled it, * * * the prisoner at the bar came in and asked them what they were doing; they said, boiling of flesh; she said they had better they had boiled the bones, with several other unseemly expressions." The prisoner "denieth all things and saith that the witnesses speak only by hearsay; after which the governor gave the jury their charge concerning the prisoner at the bar. The jury went forth, and upon their return, brought her in guilty of having the common fame of a witch, but not guilty in manner and form as she stands indicted." Neels Matson and Antho. Neelson then entered into a "recognizance of fifty pounds apiece for the good behavior of Margaret Matson for six months." *Col. Rec.*, i, pp. 95-96. For another instance of supposed witchcraft see *Col. Rec.*, ii, p. 20.

² *Charter and Laws of Pa.*, pp. 371-382.

the several courts left the province in the same condition that it was in at the repeal of the act of 1710. At a meeting of the council, held November 9, 1719, Gov. Keith, after calling its attention to the repeal of these acts, "proposed to the board to consider of the best method to prevent the inconveniences that by a discontinuance of the courts and depending process may ensue to the country, which being fully considered and debated, it was the opinion of the board that the governor should issue new commissions to the justices of the several counties, * * * authorizing and requiring them to hold courts of common pleas on the same days on which they should have held them by the law lately repealed, and to take cognizance of all the causes depending in the last courts; as also commissions to the said justices to hold courts of quarter sessions on the days upon which they should respectively have been held by the repealed law, proceeding therein according to the course of the common law and the law of this province."¹ On the 22nd of March, in the following year, similar action was taken relative to the sessions of the supreme court, and commissions were prepared by the chief justice, David Lloyd.² These proceedings, in accordance with the recommendation of the assembly at the time of its protest against the ordinance issued by Gov. Gookin, caused the "current of justice" to continue until the passage of the act of 1722.

We have seen that, from the earliest period, both the county and the provincial courts had equitable jurisdiction. The law of 1715 provided that cases in equity should begin in the provincial court. The repeal of this act left no court of equity in the province. Thereupon, May 3, 1720, Gov. Keith sent a communication to the assembly in which he stated that, having consulted gentlemen learned in the law, he was satisfied that no "representative body of any of his majesty's colonies" was "invested with sufficient powers to erect such a court, or

¹ *Col. Rec.*, iii, p. 76 .

² *Ibid.*, p. 90; *Charter and Laws of Pa.*, pp. 382-385.

that the office of chancellor can be lawfully executed by any person whatsoever, except him who by virtue of the great seal of England, may be understood to act as the king's representative in the place."¹ On the following day the assembly considered the governor's message and resolved that, "considering the present circumstances of this province, it is the opinion of this house, that for the present the governor be desired to open and hold a court of equity for the province, with the assistance of such of his council as he shall think fit, except such as have heard the same cause in any inferior court."² This is what Gov. Evans in 1706 had endeavored to establish; but, whatever may have been the attitude of the assembly at that time, it was complaisant enough when a governor like Keith, who was in every sense its creature, was to be the chancellor. At a meeting of the council held August 6, 1720, after stating that the courts of law were being regularly held, and justice duly administered therein by virtue of the several commissions issued by him, the governor declared that there was a necessity "that a court of equity or chancery should be held for the relief of those who suffer under the rigor of, or [who] cannot obtain their right by the common course of the law, the establishment of which court of equity does not appear practicable by the same methods with those of the law, as being inconsistent with the nature of a chancery, as it is practiced in all his majesty's dominions, as well in Europe as America." After further consultation the same day, it was resolved that a court of chancery be opened; rules were adopted, and a proclamation was ordered to be issued, giving notice of the time and place for holding the court.³ It was the rule therefore that, as often as the governor sat in chancery, all the members of the council who resided in or near Philadelphia, should be summoned as assistants, and no decree was to be issued except by the governor as chancellor, with the assent of two or more of

¹ *Votes*, ii, p. 270.

² *Ibid.*, 271.

³ *Col. Rec.*, iii, pp. 105-6; *Charter and Laws of Pa.*, p. 386.

the six senior members of that body. The six might also be employed as masters in chancery.¹

The court appeared to have worked smoothly enough while Keith catered to the democratic element, and its proceedings were not questioned till January, 1736, toward the close of Gov. Gordon's administration, although in the meantime two acts for the establishment of courts had been passed, and fourteen assemblies held. For nine years, however, only two cases had come to an actual decree, and in both these cases the decree was made by the consent of the parties themselves. Moreover, the dislike cherished by the assembly toward Gordon on account of his adherence to the rights of the proprietors, and against the council because it was composed of friends of the proprietors, caused a complaint against the court to be sent to him. The assembly declared that the existence of the court was a direct violation of that clause in the charter of privileges of 1701, which provided that no person should be "obliged to answer any complaint, matter, or thing whatsoever relating to property, before the governor and council, or in any other place but in the ordinary courts of justice, unless appeals thereunto" should be settled by law. The mere vote of the assembly of 1720, said the house, was "not of sufficient authority to raise a court of equity," but an act should have been passed for that purpose. It asserted also that the fees of the court were exorbitant, and compared its procedure with that of Star Chamber in England. Thereupon it sent the governor a bill to vest inferior equitable jurisdiction in the county courts, while in cases sent up on appeal, or involving the value of £100, a supreme court of three judges, to be commissioned by the governor from six nominated by the house, should have similar powers.² The governor, supported by the council, defended his conduct as chancellor. He thought the comparison with Star Chamber deserved severe censure. If the fees had been too high, the assembly could

¹ *Votes*, iii, pp. 254-5.

² *Ibid.*, pp. 256, 258, 273.

easily have remedied that. He asserted that the nomination of judges by the house was unreasonable. He dwelt upon the proceedings of the assembly of 1720 in establishing the court. He called the attention of the assembly to the fact that several of its members in 1720 were among the members that had accepted from the proprietor the charter of privileges, and they were assuredly "capable of judging of the true intent and meaning of that clause." When, in 1725, the house, in its "Vindication of the Legislative Power," composed by David Lloyd, had made a critical consideration of this charter, no conflict between it and the court of chancery was mentioned. In fact, in 1726, the rules of the court were drawn up by Lloyd and Andrew Hamilton. No assembly since 1720 had seen fit to alter the procedure of the court. He claimed that the court of chancery, as held by the governor and council in all the colonies, was an "ordinary court of justice." He thought it strange "that the person in whom half the power of legislation and the whole power of appointing all the magistrates, those of corporations excepted, is vested, should be thought unfit to be trusted with only a vote, in conjunction with others, in the trial of a case of private property." His desire "to preserve decency and order and some resemblance between this government, and all the other British ones in America," prompted him to advise the continuance of the court.¹ Thereupon the proprietors requested the opinion of the attorney-general and solicitor-general on the legality of the court. The crown lawyers declared that the unanimous resolution of the assembly, May 4, 1720, the action of Gov. Keith in issuing a proclamation to establish the court, and the subsequent approval of the assembly, were sufficient in themselves to endow the court with legal powers in spite of the clause in the charter of 1701. But if the governor had proceeded to establish the court without the consent of the assembly, in view of the charter of 1701, his act would have been at least questionable. "Until the whole leg-

¹ *Votes*, iii, pp. 268-273.

islature," said they, "have passed an act to the contrary," the court legally established might be legally held. Lastly, they asserted that, as the assent of the governor and six-sevenths of the assembly had been given, the establishment of the court did not violate the charter of privileges, and that the resolution of the assembly of 1736 did not make that illegal which before was not illegal.¹ But the belief that the court would be used to aid in the recovery of arrears due the proprietors was so general in the province, that popular aversion prevented its re-establishment.² The proprietors, however, thought that such a court was necessary for the trial of cases concerning land, and that the governor was legally empowered to hold it.³ In fact, in 1751, they instructed Gov. Hamilton "to pass no bill for doing what ought to be done by a court of chancery."⁴ "We desire," wrote Thomas Penn to Mr. Peters, September 28, 1751,⁵ "that the court of chancery may be established in a manner most favorable to the people, without giving up the king's prerogative with which we are entrusted. We should have some share of influence, else the trial would not be equal. We are willing, however, that the assembly should regulate the court." Orders to this effect were sent also to Gov. Denny and to Gov. John Penn. The proprietors offered to allow persons other than the governor and council to hold the court,⁶ but the assembly continued its opposition to the very end.

Resuming again the discussion of the establishment of the courts of common law, at a meeting of the council held May 12, 1722, it was stated "that the constitution of the several

¹ *Shippen Papers*, p. 1.

² *Pa. Arch.*, 2d series, vii, p. 166; Penn MSS., *Corresp. of the Penn Family*, T. P. to John Penn, Sept. 10, 1736; P. L. B., i, John and Richard Penn to T. P., Aug. 10 and 26, 1736; Feb. 17, 1737.

³ P. L. B., ii, T. P. to Thomas, May 3, 1743.

⁴ *Ibid.*, iii, T. P. to Hamilton, Sept. 14, 1750.

⁵ *Ibid.*

⁶ *Ibid.*, v, T. P. to Denny, Oct. 9, 1756; to John Penn, May 9, 1769.

courts of judicature within this province would in all respects be more regularly and effectually established by [law or] ordinance, as they are done in some of our neighboring governments, than by any particular commissions."¹ Thereupon Gov. Keith sent to the assembly a message to this effect. A bill entitled, "An act for establishing courts of judicature in this province" was immediately prepared by that body, and on the 22nd of the month was signed by the governor. With the exception of the fact that the procedure was not so minutely specified, and was made more analogous to that of the courts in England, the law was substantially the same as its predecessors of 1715.² This was the first and only law relative to the establishment of courts of judicature that was not repealed by the crown. It seems, however, that in November, 1726, complaint had been made to the assembly that, in civil cases, under this law the supreme court had no right to issue any original writ or process. After prolonged consideration the assembly decided that this power should be expressly denied the supreme court. A law embodying this decision, and passed in August, 1727,³ was repealed by the crown in 1731. In a message from Gov. Gordon to the assembly, February 3, 1731, among other matters, he urged the appointment of an agent to look after the interests of the province at London. "I am led to press this the more closely," said he, "from some late endeavors that have been used to obtain a repeal of the law for establishing courts of judicature, passed since my accession to this government, * * * and, as the matter is still depending before the Lords of Trade, it will become us to take all suitable measures to prevent a design of this nature."⁴ The governor received notice of the repeal, November 11, 1731. He imme-

¹ *Col. Rec.*, iii, p. 171.

² *Charter and Laws of Pa.*, p. 387.

³ *Ibid.*, p. 401.

⁴ *Votes*, iii, p. 150. *Col. Rec.*, iii, p. 397. Penn MSS., *Offic. Corresp.* i., Gov. Gordon to John Penn, Sept. 23, 1727.

diately called a special session of the assembly, which met on the 23d of the same month. In his opening address he called attention to the repeal, with which he was much displeased. He declared that it was obtained by the endeavors of some persons on the pretense that the law was prejudicial to the interests of the king,¹ and that he was in possession of letters to that effect. On the following day the assembly stated, "We are extremely concerned that their lordships of the Board of Trade were so ill informed of the intentions of the legislature of Pennsylvania in passing the act of assembly for establishing courts of judicature; or that it should be understood as proceeding from a want of duty to the king, or regard to the persons employed under him. The governor is sensible the legislature had no other view in the making that act than to give an opportunity to all persons who may have to do with courts of justice here to apply to a superior judicature for redress by way of appeal or writ of error, if they conceived themselves aggrieved by the sentence of the court before whom judgment was given, which by our constitution no person can have but by appeal to Great Britain, if the supreme court can hold plea of causes originally commenced there. But upon reading the papers, which the governor has been pleased to communicate to us, touching the repeal of the said law, and the methods that have been taken to obtain it, we cannot help

¹ The probabilities are very strong that the repeal was accomplished through the agency of John Moore, collector of the king's customs, who had felt himself aggrieved by his failure to win a certain case. To a meeting of the council, August 18, 1727, at which amendments to the bill of that year were under discussion, he had sent a communication, "requesting to have a clause inserted, which provided that all actions, * * * informations and prosecutions whatsoever, wherein his majesty, his heirs, or successors, is or shall be in any way interested or concerned, shall and may be commenced, sued or prosecuted originally in the supreme court" of the province. This was referred to the assembly, but no notice was taken of it. The failure to have this clause incorporated into the act, in connection with the statements in the reply of the assembly to the governor's speech, furnish sufficient indication at least of the causes of the repeal, if not of the mover of it. *Charter and Laws of Pa.*, p. 309; *Col. Rec.*, iii, pp. 278-9.

saying that so much of the representation made to the king as insinuates the partiality of our inferior courts of justice, or that the said act was gained by the undue influence of particular persons on the governor and then general assembly of this province, is false and scandalous, and the author studied rather to recommend himself by such suggestions than to do his majesty any real service."¹ By the repeal of this act the province was not left as upon former occasions without a judicial establishment. On November 27, 1731, a bill for reviving the act of 1722 was introduced into the assembly, and became a law the following day.²

We have noticed that, in its contest with Gov. Evans in 1706, the assembly had endeavored to secure the appointment of judges the length of whose tenure should be determined by their good behavior, and not by the pleasure of the proprietor or governor. But the refusal of Evans and of his successors in office, did not discourage the assembly. Indeed, about 1743 the desire for popular control over the appointment of judges had grown so strong, that the plea for their election by the people was urged. The opinion of the proprietors on this point may be gathered from the following: "We think it unwise," wrote Thomas Penn to Gov. Thomas, August 21, 1743,³ "to make any statement in council concerning judges holding by good behavior. You should be careful to preserve our rights in this respect. Isn't there as much likelihood for partiality where judges are elected? We shall never consent to alter the commissions of the judges, unless the whole court is put on the footing it is in England, by depriving the judges of seats in the assembly, and changing the method of choosing sheriffs."⁴ Again, in a letter to Mr. Peters, February 24, 1751,⁵

¹ *Votes*, iii, pp. 168-169. ² *Charter and Laws of Pa.*, p. 404. ³ P. L. B., ii.

⁴ By an act passed in 1706, the offices of sheriff and coroner were made elective, and being considered as officers of the crown, they were commissioned and required to enter bond in the name of the crown. Bradford, *Laws of Pa.*

⁵ P. L. B., iii.

Thomas Penn said, "When the assembly will settle a fund to pay proper salaries to judges, we shall be ready to give commissions to them in the form observed in England," *i. e.*, during good behavior. Eight years later, taking advantage of the venality of Gov. Denny, the assembly secured the enactment of a law to supplement the act of 1722. It provided that the court of common pleas in each county should consist of five judges. They and the judges of the supreme court should serve under commissions issued during good behavior, and were subject to removal from office upon an address from the assembly. No justice of the court of quarter sessions was allowed to be a judge of the common pleas. The salaries of the judges of the supreme court were also fixed.¹ But the law was repealed by the crown, September 2, 1760, because it affected the royal prerogative in a point of great importance. It was believed that tenure during good behavior would not at the same time promote the interests of the colonies and of Great Britain.² The Board of Trade in its report on this act referred to the absolute power given the proprietors to establish courts and to appoint judges. It declared that they should not be limited in the exercise of these privileges, and that the action of the Pennsylvania assembly could not, without giving cause of offence to the other colonies, be based on the analogy of the method observed in England.³ Gov. Denny, however, attempted to appoint judges on such a tenure, but the keeper of the great seal refused to affix it to the commissions. Thereupon he issued them under the lesser seal, and in the name of the king. But this fact, together with the repeal of the law, the attorney-general decided was sufficient to vacate the commissions.⁴ The judges then refused to serve,⁵ and the commissions were

¹ *Charter and Laws of Pa.*, p. 405.

² Chalmers, *Opinions of Eminent Lawyers*, ii, p. 105.

³ *Col. Rec.*, viii, p. 544.

⁴ P. L. B., vi, T. P. to Peters, Jan. 12, 1760; to Hamilton, June 13, 1761.

⁵ *Ibid.*, T. P. to Hamilton, Oct. 9, 1761.

issued in the name of the proprietors. A few years later, the proprietors declared that, if the assembly would get from the crown a recommendation for the purpose, they would assent to a law to appoint judges during good behavior.¹ But in the law passed in 1767, which again supplemented the act of 1722, no mention was made of the tenure of the judges.² They continued, therefore, to hold office during the pleasure of the proprietors.

¹ *Ibid.*, viii, T. P. to Allen, July 13, 1765.

² *Charter and Laws of Pa.*, p. 407.

CHAPTER IX.

THE BILLS OF CREDIT.

PENNSYLVANIA, like the other colonies, experienced the ill effects of a scarcity of money. The natural tendency was for coin to flow out of the country. This was due to the unfavorable balance of trade with England, and must continue until the balance of trade underwent a change favorable to the colonies;¹ or until they issued their own currency. Owing to the stringency thus caused, an impetus was given to the employment of various substitutes for money. Hence the earliest current pay in the province was flax, hemp, linen and woolen cloth, or other products of the country. Indeed, in 1683 and 1693, it was enacted that wheat and other grains, hemp, flax, beef, pork and tobacco should be current pay at the market price.² But the supply of coin still remained scanty. This was due in part to the necessity of paying coin for cattle imported at Philadelphia from East Jersey. Though measures were taken to encourage the growth of cattle in the province,³

¹ In 1749 the proprietors expressed the opinion that the balance of trade could not be changed in favor of the colonies, and thereby more gold and silver put in circulation, except by discouraging the use of English manufactures and European trifles, and encouraging home manufactures. Penn MSS., P. L. B., ii, T. P. to Hamilton, June 6, 1749.

² *Charter and Laws of Pa.*, pp. 140, 162, 229.

³ The following suggestions were made to the assembly by the council, August 1, 1701; but, on account of the pressure of other business, were not considered by that body: that every person who had forty acres of land under cultivation should keep at least ten sheep; that no person should cause to be killed more than one-half of his growing neat cattle; that no neat cattle should be sold to the inhabitants of Philadelphia, from June to September yearly; that certain precautions should

little permanent relief from the scarcity of coin could be secured. Again, the financial stringency caused the rate of exchange of money current in Pennsylvania, notably of foreign coins, to be occasionally raised even above that fixed in neighboring colonies. In 1683 it was enacted that the rate of sterling should be advanced 25 per cent., while New England money was rated at par. Pieces of eight were to pass for 6 shillings, Peru pieces for 5sh. 8d., "Caroluses" and "Jacobuses," for 30 and 32 shillings respectively, Spanish pistoles for 20 shillings, ducats at 11sh. 6d., and lesser coin proportionately. All contracts at other rates were of course to be void.¹ Ten years later a similar law was enacted. Special reference was paid, however, to the weight of the coin, and as to whether or not it had been clipped. In these cases corresponding deductions were made.² The rate was again raised in 1698, and the punishment for clipping or otherwise impairing the value of the coin, was fixed at a fine of £100 and imprisonment for a year. In fact it was distinctly stated that the law was passed in order to encourage the "bringing in of money to promote trade, and make payments more easy."³ But the proprietor and others in England feared that their interests as creditors would suffer. Particular mention was made of the danger that the quit-rents would be reduced. The council, however, replied that the object of the measure was simply to keep money in the province, and that it should not be prejudicial to the payment of the quit rents.⁴

In 1700, at a conference held at New York with Lord Bello-mont and Gov. Nicholson of Virginia, Penn proposed the adoption of some method to regulate coinage in the colonies.⁵ But such a scheme was beset with too many difficulties to

be taken concerning the killing of cattle and the location of slaughter-houses; and that, for the encouragement of the trade with the West Indies, the duties on rum should be reduced. *Col. Rec.*, ii, p. 27.

¹*Charter and Laws of Pa.*, pp. 145-6.

²*Ibid.*, p. 238.

³*Ibid.*, p. 275.

⁴*Col. Rec.*, i, p. 558.

⁵*N. Y. Col. Doc.*, iv, p. 757.

meet with any response. In the same year, also, another act to regulate the rates of coins was passed by the legislature of Pennsylvania, but was repealed by the queen in council in 1703.⁴

The evils caused by tampering with the value of the coin were such as to necessitate some action by the home government. Hence, June 18, 1704, a proclamation was issued by Queen Anne, fixing the rates of foreign coins in the colonies. In 1708 this was confirmed by an act of parliament, 6 Anne, chap. 30. Thereupon the assembly, October 14, 1708, passed an "act for ascertaining the rates of money for payments of debts, and preventing exactions in contracts and bargains made before May 1, 1709," the time at which the statute was to go into effect. It appeared that the silver coins, known as pieces of eight, which formerly passed for eight shillings, had by the proclamation and act of parliament been ordered to pass for six shillings, in spite of the fact that they might possess the same intrinsic value as before the passage of the law. The assembly declared that the real worth of a coin depended on the quantity of silver in it, and not on arbitrary changes in its current value. It moreover asserted that some persons had taken advantage of the statute to force their debtors, after May 1, 1709, to discharge their debts according to the rates mentioned in the proclamation. By this act they would receive a third more silver than the contract implied at the time it was made. Certain individuals, also, after the arrival of the news concerning the passage of the statute, had lent money at current rates, but had taken obligations for its payment at the rates prescribed by the proclamation—a fact which would be injurious and oppressive. It was therefore enacted that, if any person after May 1, 1709, in payment of money lent,

⁴ Bradford, *Laws of Pa.* An act of similar tenor, passed in January, 1705-6, was repealed by the crown in 1709. The reason for the repeal, as given by the attorney-general, was that, since parliament, by the statute 6 Anne, chap. 30, had settled the "rates of foreign coins in her majesty's plantations in America," there was "no need of such an act in Pennsylvania." *Pa. Arch.*, 1st series, i, p. 156.

for goods sold, for perquisites, fees, salaries, or other debts then due, or for contracts made before May 1, 1709, should take any of the silver coins mentioned in the proclamation, except Peru pieces—which were to be accepted at their current value—at a rate other than 9sh. 1d. per oz., Troy, and for any sum under a piece of eight at a rate other than 5½d. per pwt., he should forfeit to the party aggrieved £10 and costs of suit. The debtor should be discharged of the whole of his debt in excess of what it amounted to at the rates just mentioned. Furthermore, all “salaries, fees, workmen’s wages, and prices of commodities and manufactures” were to “abate in proportion to the fall in the denomination of money,” which had been caused by the statute, *i. e.*, to three-fourths of what had been previously demanded. It was provided, however, that no one should be compelled to receive money at the present rating of the currency for the discharge of rents reserved, or of other contracts for which the consideration had been agreed to be paid in sterling, or at the rates fixed by the statute. Lastly, sets of weights exactly proportioned to the rates imposed by parliament should be prepared and sold by certain persons in Philadelphia, and the prices thereof were fixed.¹ This also was repealed by the queen in council, February 20, 1713, because it was repugnant to the statute.²

As the needs of the province multiplied, the complaints about the dearth of money correspondingly increased. In 1718, owing to the fact that New York and Maryland had not complied with the statute, and had laid duties upon the products from Pennsylvania, as well as upon British commodities exported from it, and thereby had drawn away a considerable amount of money, a duty of 10 per cent. was imposed on products imported from those colonies into Pennsylvania. This was to continue so long as their tax remained in force.³ Between 1717 and 1722, moreover, about fifteen acts for raising

¹ Bradford, *Laws of Pa.*; *cf.*, *Charter and Laws of Pa.*, p. 287.

² *Pa. Arch.*, 1st series, i, p. 157.

³ Bradford, *Laws of Pa.*

money by taxation were passed. But gold and silver being acquired chiefly from trade with the West Indies, were subject to contingencies, since the amount of them in the province varied with the demand for Pennsylvania commodities. Their value in current pay was thus very uncertain. About 1722, also, trade and production declined,¹ and specie, for want of other returns, was generally shipped to England. The inhabitants were in considerable distress. Debts could not be paid. Rents of houses fell; and the value of land and improvements sank.² Various remedies were then suggested with the view of economizing the use of specie, viz., that the hiring out of slaves, who worked at reduced wages and thus prevented the employment of freemen, should be stopped; that the manufacture of beer and distilled spirits should be encouraged; that products of the country should be made a legal tender; that the rate of interest should be reduced from 8 per cent. to 6 per cent.;³ that executions for debt should be stayed; that, notwithstanding the statute of 1708, the value of sterling and of dollars should be raised 25 per cent.; and finally, that the exportation of money should be prohibited.⁴

The proposal of paper currency as a panacea occasioned considerable debate.⁵ The majority favored it; but many of

¹ The following table is given in Hazard, *Register of Pa.*, i, p. 6:

1720,	Exports=	£7928	14 sh.	10 d.	; Imports=	£24531	15 sh.	2 d.
1721,	" =	£8037	0 "	1 "	" =	£21548	4 "	11 "
1722,	" =	£6882	1 "	6 "	" =	£26397	9 "	6 "
1723,	" =	£8332	3 "	9 "	" =	£15992	19 "	4 "
1724,	" =	£4057	2 "	1 "	" =	£30324	16 "	1 "
1725,	" =	£11981	1 "	3 "	" =	£42209	14 "	2 "
1726,	" =	£5960	2 "	5 "	" =	£37634	17 "	8 "

¹ Hard money was so scarce that many were obliged to cut gold coins into sixpences for marketing. "Case of the Inhabitants of Pennsylvania," 1723.

³ This suggestion was adopted in an act of assembly passed March 2, 1723. Bradford, *Laws of Pa.*

⁴ *Col. Rec.*, iii, p. 173; *Votes*, ii, pp. 313, 314, 335.

⁵ Proud, *History of Pa.*, ii, pp. 152-170.

the more solid men of the community, among whom were James Logan and Isaac Norris, were opposed, chiefly for fear of depreciation. In regard to the paper, they held substantially the views of the later Bullionists.¹ They argued that, when parliament issued bills of credit, called exchequer bills or notes, it kept them equal to silver by giving the Bank of England² large sums of money to receive such bills as its own, and to exchange them for ready cash on demand. Hence, if bills of credit were issued in Pennsylvania, since there were no banks to pay ready money for them on demand, they should be made to continue of the same value as ready money, according to the rates at which they were first issued.³ If such bills were

¹ The work from which they appear to have derived their objections is Sir Henry Pollexfen's "Discourse of Trade, Coin, and Paper Credit," London, 1697, a copy of which is in the Loganian Library at Philadelphia. He states that the "passing of paper in payments was not much in practice till after 1660, and had its origin in the profuseness of the court taking up great sums at any rate from the goldsmiths, and they from the people, and served instead of coin for supplying the wants of those that for goods or otherwise had taken tallies from the exchequer, which at extraordinary rates were often sold to the goldsmiths for their notes, which, when given out for that, or for other occasions, did circulate for some time, and excused the use of so much coin, which increased trade; but it ended in shutting up the exchequer; and until it be decided whether the great debt yet owing to the bankers shall be paid by the government, or lost by the people that trusted them, no judgment can be made as to who had the profits gotten by that paper credit," pp. 68-69.

² "When any tax is granted by parliament, tallies, exchequer notes or bills issued out upon the same for the supplying of the government with ready money till the duties be paid, may have as good credit as the bank bills at Venice or Amsterdam, because grounded on the greatest authority and public faith." *Ibid.*, p. 68.

³ "Coin is not only the easiest and safest security that can be given, but the quickest for dispatch, and of the most satisfaction in buying and selling," p. 17. "What paper credit may be found necessary should be carefully settled by authority on good funds, with restrictions to prevent the extending of such credits beyond the funds. For as it is impossible for persons to run in debt beyond their estates, but will run the risk of losing their credit, so with nations or banks. If paper credit exceed the funds, and the prospect of having coin upon occasion to answer such credit, it may be found a loose way of dealing, subject to great

given to an applicant on easier terms than gold and silver would be, if paid out of the treasury, by so much would they depreciate. The theory that they might be issued and loaned on small proportionate deposits, or that for a term of years little more than the interest need be paid on them, they felt to be partial and destructive to public credit, because the consideration given was unequal to the sum received. Paper money, they argued, must be lent to all, or only to some. If lent to all it would be impracticable to issue enough to satisfy the demand, while if lent only to a few, favoritism would be practiced. They showed that the more the currency depreciated, the greater became the borrower's advantage in making his annual payments. Lastly, the credit of such a currency they thought should be supported by the issue for short periods of only small sums, and those for the immediate purposes of circulation.¹

On the other hand, the defenders of paper money said that their intention was to keep the paper of the same value as specie, and that, if the bills could not be loaned for a less pledge or security than gold or silver, easy terms of paying them would not diminish their value. The stamp of the government was sufficient, they declared, to render their value stable, and would keep them at par with gold and silver of the same denominations. In other words, the fact that they bore on their face the official stamp, and that they had the whole

dangers and inconveniences; for most likely such credit may fail when there may be most occasion for the use of it. No nation can be too cautious with whom they trust their riches, nor what they make or allow to pass for treasure, though but artificial," *Ibid.*, p. 67.

¹ "Such credit as far as may be necessary to supply the want of coin may be very useful, but if it jostle out the use of coin, as some have proposed, it is most dangerous," *Ibid.*, p. 65. "Some paper credits may be allowed with a prospect that they may stand good against all attempts or accidents that may endanger its reputation; but if general and too much, the more likely to fall and sink under its own weight. If care be not taken at the same time to preserve gold and silver, which must support it and make it useful, we may soon experience a great want of valuable riches, and have in its room only what is imaginary," *Ibid.*, p. 66.

power of the government to force their circulation at par, would insure them against depreciation. They asserted, moreover, that the scheme to lend out sums on lands or plate as security to be discharged by annual payments with interest, was not unjust or dangerous. The pledge given was more than equal to the sum received, while the interest itself was not an inconsiderable element. They maintained that, when gold and silver might be had in New York, or elsewhere, in exchange for paper, one was as good as the other; because the value of a thing depended upon the amount it would purchase. They thought that, if the whole sum issued was small, it would not answer the immediate exigencies of those who had good security to offer. A longer time also for sinking the notes, they believed, would help many to effect what might be to their own advantage and to that of the country at large. They were answered in turn by long criticisms, notably on the last statements, showing the popular fallacies therein and favoring public credit, but not all sorts of ill-devised schemes. It was proved that the price of gold and silver depended on supply and demand.¹ If the people made it evident that they estimated them as less valuable than specie, all would so consider them. The amount of the security² made no practical difference, and would

¹ "Bullion or coin, when exchanged for commodities or the commodities themselves, may be esteemed higher or lower, according to the plenty or scarcity of the bullion or coin, or of the commodities." *Ibid.*, pp. 30-31.

² "It cannot be pretended that any fund or security can be more infallible than land; but paper currency, though land be its foundation, if intended as running cash, will never pass as money longer than money may be had for such bills as soon as demanded. When that falls, such bills will fall under a disrepute, occasion confusion, and stop trade and payments, though the security be unquestionable. A law to make bills or tallies a good tender, would have little better success than the allowing of coin of different values; and force will rather be a disrepute and make them ineffectual, than be a credit, and create opposition rather than facilitate the taking of them. * * * Though people should take notes issued out upon land security, payable on demand, yet any suspicion that they should not have money for such bills on demand, will occasion a general run, because such bills will not serve them longer than money may be had for them on demand. The

certainly add nothing to their value. Clearly, if a man possessed £50 in bills of credit, though a security of £100 were given by him at the time of his first taking the currency, in event of depreciation, the security would not compensate for the loss;¹ because, when he returned the bills, the security would be discharged by the payment, no matter what the real worth of the currency might be at that time. No force exerted by the government could compel its circulation for any length of time at a parity, or at a fixed ratio with specie.² Paper money, if issued at all, should be primarily for a circulating medium, but not to scale down debts.”³

people's occasions will always make a great difference between what they have lent out on mortgages and what they have laid out on such notes, being what they designed for their running cash. * * * If it be found that our coin is not sufficient to supply our present occasions, bills or notes issued out upon funds or land security of a sufficient value, payable at certain times, with a running interest, may supply the deficit, it not appearing impossible to make such bills or notes as secure and as valuable as any mortgage of lands or bonds, and as desirable as money, and to continue in that regard till there be a failure of payment. But nothing but having a prospect that coin will be ready to pay such bills at their respective times, can make them be preferred to money, or preserve the reputation of such bills, or any paper credit, but the having the money ready to make a punctual payment at the time agreed. * * * No such bills can be brought into practice for marketing and petty expenses, * * * and when any failure happens, a stop will be put to the currency of the bills, and give preference to coin.” *Ibid.*, pp. 71, 73-75.

¹ “If a gentleman hath an estate in land and money, if he should squander his money on a supposition that bills of credit issued out chargeable on his land may do as well, he would not long be the true owner, either of land or money.” *Ibid.*, p. 65.

² “Unless ready money can be obtained for such bills on demand, the bills are not likely to pass as money, further than as the law may be compulsory, which may be impossible to reach future contracts, and therefore of such little use in dealings as may not make amends for the hardships they will put upon creditors at the time of passing such an act. Nothing is [more] likely to occasion the hoarding of money than the people's being possessed with fear that, if they part with it, they shall have such notes or tallies forced upon them in exchange for it; for being that they cannot be converted into money until they become payable on the funds on which they were issued, it cannot be expected that they should be willingly taken.” *Ibid.*, pp. 71, 72.

³ “Paper credit may come in as an aid in case of want, but is not to be depended

However valid these objections might be, they could not prevail against the urgent necessity for an increase in the medium of circulation, and the rapidly-growing sentiment in favor of the issue of bills of credit. Still, considerable doubt prevailed as to the form and method to be employed in their issue. Those which had been hitherto issued in the colonies were based on one of two foundations—either on the credit of future dues and taxes by which in time they were to be redeemed, as in New York and South Carolina, or on pledges, and redeemed by the borrowers repaying the bills into the treasury at stated intervals, as in New England. As long as the amount issued was kept within proper bounds, the latter method was far safer and more feasible. Then the advisability of the establishment of a provincial bank¹ or office to loan the bills at interest to borrowers on deposit of satisfactory security was discussed. While opinions on this scheme were being freely circulated, Gov. Keith offered some suggestions. He thought that, whatever might be the amount issued, if a part of it, varying according to the time for which it was to run, was returned to the loan office yearly, it might be lent out again at 5 per cent. for any period within the term of issue, to such persons as could not use the first loan. Every person according to his ability could thus share “in that advantage which the public * * * offers

on, as its origin and existence are from credit and opinion, that must be obtained with a prospect that it will continue. Bank notes on good foundation may pass from hand to hand as money, and be useful as long as there is good assurance that such notes will be discharged by money at the time specified for the payment of them, yet it will never be esteemed as coin, because it will only serve as a pledge to gain time for the payment of money, but not answer the ends designed by money, *i. e.*, to pay debts, which can be no more done by such bank notes than a mortgage that is transferred from one to another can be said to be discharged till the money be paid off by the mortgager, and deed cancelled.” *Ibid.*, pp. 76, 78.

¹ As early as 1689, a plan for the establishment of a bank had been submitted to the council. Though no immediate encouragement was given, Gov. Blackwell expressed the opinion that the petitioners might issue personal notes to such as would receive them as money; but on account of the danger of counterfeiting, he doubted the expediency of the undertaking. *Col. Rec.*, i, p. 236.

to the necessities of the people." If a large proportion of the entire sum issued came in annually in order to be loaned again, it would in great measure prevent the accumulation of the bills in the hands of individuals, and would help considerably the circulation of them. It would also give frequent opportunity to discover frauds, and gradually increase the revenue of the bank. By this means, the original sum would be sunk within the time specified. Hence, at the end of the term for which the bills were issued, either they would be found in the loan office or their value in cash ready to pay what should then happen by accident to be left outstanding. He believed also that, if too great security were demanded for the loan of the bills, the design of relieving many industrious people would be frustrated. One-half the value of lands, one-third the value of houses and personal estate, and nearly the entire value of ground-rents, he thought, might be safely lent to those "willing and able to give such security," and that, since the king could repeal the law at any time within five years after its enactment, the duration of the term of issue need not be too definitely fixed.¹

After several petitions concerning the amount to be issued had been received in the assembly, a number of motions on this head were made and negatived. Then £12,000 was agreed upon as the proper amount. A suggestion to loan this at 6 per cent. was also negatived. Thereupon the assembly resolved that the bills should pass current for five years at 5 per cent., it being left to the choice of the borrower to pay off sooner the principal, or any part of the sum he had received, provided it was not less than one-fourth at a time. The security to be deposited should be three times the value of the amount loaned, if in bonds, and five times its value, if in houses. But the proceedings of the assembly did not give satisfaction, for in November, 1722, several petitions were presented, praying that the paper money should be made to

¹ *Votes*, ii, pp. 342-3.

affect former contracts, and should continue current longer than ten years. It was also desired that the sum to be issued should be increased; that the security should be lessened; and that the method of redemption should be such as to extinguish both principal and interest together.¹ Thereupon, March 2, 1723, the assembly passed a law for the issue from a provincial bank or loan office, and in denominations varying from one shilling to twenty shillings, of £15,000 in bills of credit. They were to be signed by agents, men of financial standing in the province, who were expressly named in the act; and a loan office, with four trustees, was established at Philadelphia. The bills should be loaned for eight years at 5 per cent. per annum, and were to be secured by a mortgage on fee simple estates in land or ground-rents, or for one year on plate at the same rate of interest. The trustees, before accepting any lands, houses, or ground-rents as security, should ascertain what the value of the estates was, whether the title was good, and if they were free from encumbrances. The bills were intended chiefly for the "benefit of the poor and industrious, at an easy interest to relieve them from difficulties, which end could not be well performed if any one person should be allowed to take up too great a sum." Hence, in order to "prevent the splitting of any man's land into parcels by alienating it to others in trust, in order thereby to get greater amounts, and to prevent frauds and abuses in mortgaging lands," the applicant had to show that the property offered was held in his own right, was free from any encumbrances, and had not been conveyed to him for the purpose of raising money on loan for others. The amount loaned to any applicant, moreover, was not to be less than £12, 10sh., or more than £100, unless at the expiration of four months after the opening of the loan office any part of the sum voted should remain undisposed of. In this case an applicant might have £200. The trustees were to take a security on the

¹ *Votes*, ii, p. 341 *et seq.*

value of lands or ground-rents of at least double, and on houses of three times the amount loaned. The mortgage was to be executed in the presence of two witnesses, acknowledged before a justice of the peace, and duly enrolled in the loan office at the expense of the applicant. The loans should be repaid in annual installments of one-eighth, either in current money or in bills of credit. These installments should be endorsed on the back of the mortgage. At the last payment the mortgage was of course given up. In default of payment within two months after the installment became due, the mortgager might be proceeded against by *scire facias*. If he did not appear at the day of return, or pay what was due, the mortgaged premises could be sold. The quantity received by these yearly payments at the loan office, was to be appropriated for the purchase of other bills; and all so returned were to be sunk and destroyed. The interest should be disposed of as the assembly might direct. A committee of that body was yearly to audit the accounts of the trustees and provincial treasurer, and to certify the fact by public advertisement, showing the quantity of money received, and then in the hands of the trustees. The paper money, as well as country produce, was "to be equal to all current coin for the discharging of all debts, bonds, mortgages, and other contracts, already made, or hereafter to be made, either for sterling, silver, dollars, or any other species of gold or silver." Refusal to receive it, or the attempt to dispose of commodities for specie at a cheaper rate, was to be punished with fine. Any person who did so refuse the bills, should, in addition to the fine, lose his debt, and be deprived of action for recovery. Severe penalties were also provided against counterfeiting.¹ Of the

¹ In October, 1683, a case of counterfeiting was tried before Penn and the council. The offender was sentenced to make satisfaction to the injured party, to pay a fine, and to give security for good behavior. Soon after a proclamation was issued to cry down "new bitts and New England shillings," *Col. Rec.*, i, pp. 84-88.

£15,000 issued, £2,500 was appropriated for the payment of public debts and salaries, while £1,500 was divided in loans among the counties. It was expected that the provincial treasury would be reimbursed from the customs and excise; and an annual tax of 1d. per £ was added to the regular county levy to discharge the county loan. As a compensation for this unwarrantable appropriation of the excise, £1,800, arising annually from the 5 per cent. interest on the bills loaned, was reserved for the support of government.¹ The hope of temporary release from the burden of taxation—always a plausible pretext—assured support for this currency scheme. Some doubt, however, arose over the question whether or not the estate offered as security should be free from encumbrances, for the land was subject to proprietary rents and reservations. Hence the trustees, by an act passed the following May, were instructed to ascertain the clear value of the property over and above such reservations, and to loan to the mortgager bills of credit to the amount of one-third of its clear value.²

No sooner had paper money thus issued begun to circulate than numerous petitions for an increase of it were presented. Thereupon, December 12, 1723, a bill was passed for the emission of £30,000 additional. This was to be loaned at 5 per cent. interest for a period of twelve and one-half years, and in amounts not greater than £200 or less than £12, 10sh. If within eight months any part of the £30,000 was still undisposed of, an applicant might have £500. The bills, as they were returned, could be annually reissued in lots of two-twenty-fifths of each loan, till the expiration of the period specified, at which time the entire amount should be redeemed and cancelled. Precautions, also, were taken against counterfeiting by changes in the devices printed on the bills; and the trustees were given corporate powers.³

¹ *Votes*, ii, p. 344; Bradford, *Laws of Pa.*

² Bradford, *Laws of Pa.*

³ *Ibid.*

The issue of these bills gave the province considerable relief. Trade revived and prosperity seemed to be restored. Gov. Keith, however, was forbidden by instructions from the trustees of the government to assent to any further acts for the issue of paper money.¹ Still, in 1724, he suggested to the assembly the passage of a bill to lessen the yearly payments into the loan office by continuing the currency already issued for a reasonable time longer than was provided in the acts for its emission. This, it was believed, would meet the demands of those who were anxious for further issues. Moreover, the annual redemption and destruction of the bills greatly reduced their quantity; while those in circulation were often in very poor condition. Therefore an act soon after was passed providing that the principal annually paid should be reissued for six years. The bills reissued yearly should be cancelled within the time provided for redeeming the original sums. Also, on urgent request, a sum of £10,000 in small bills was to be printed and exchanged for such as were ragged and torn.²

The paper money was regarded with disfavor in England, although strong representations were sent from Pennsylvania showing the benefits which had resulted from it. It was shown that the later issues had not lessened the value of the bills, but that the discount upon them was diminishing and seemed likely to disappear. Still the Board of Trade would have recommended the repeal of the acts, had not many persons come into possession of the bills. As it was, the Board gave warning that care should be observed in properly redeeming them, while the governor was ordered to consent to no further emission under pain of its disallowance.³

In spite of the fact that the paper money had greatly bene-

¹ *American Broad-sides*, Mrs. Penn to Sir William Keith, May 26, 1724.

² Bradford, *Laws of Pa.*

³ Gov. Gordon to the Board of Trade, Dec. 15, 1726; *Pa. Arch.*, 1st series, i, p. 186; *Votes*, iii, p. 5.

fited trade, the increase of population—particularly from immigration—and the diffusion of the currency incident thereto, caused considerable depression. The frugal and industrious kept what they had. The merchants in general scarcely knew how to invest. Those who desired to stir up contention against Gov. Gordon, who favored a cautious policy in issuing the bills of credit, hinted that the letter from the Board of Trade had been procured for the occasion. Thereupon, in October 1728, the assembly declared that the increase in commerce and immigration, the want of currency to discharge contracts made with English merchants and their factors in the colonies, and provision for the support of government necessitated a further emission of paper money. Hence a bill for the issue of £50,000 was passed. Gordon, fearing that it would be repealed by the crown, and being desirous that some features which would make it less offensive to his superiors might be introduced, reminded the assembly of the threat uttered by the Board of Trade, and requested it to enact that the bill should remain unenforced till it received the king's approval. At the same time he urged various modifications—notably that the bills should circulate for a shorter period, that the amount proposed should be reduced, and that a stipulation for the payment of quit-rents in sterling should be introduced. Then the assembly suggested that £40,000 be issued at 4 per cent. for 16 years; but he insisted on the issue of £25,000 at 5 per cent. for 10 years.¹ After some conference a compromise was reached, May 10, 1729, by which £30,000 should be issued at 5 per cent. for 16 years, in sums not exceeding £300, or less than £12, 10 sh. to any one person. Special care was taken to guard against counterfeiting, in that the trustees or their representatives were required to be present at the printing of the bills, and personally to take charge of the apparatus.² It will thus be seen that the governor's contentions were unheeded. Still, he promised to aid in securing the acceptance of the act

¹ *Col. Rec.*, iii, pp. 346-58.

² Bradford, *Laws of Pa.*

in England, since there was danger that any attempt to have it repealed would provoke a furious outbreak against the proprietary party in the province. An English agent, F. J. Paris, was accordingly appointed to procure the acceptance of the act; and addresses were sent to the king and to the proprietors. These energetic efforts were successful, for the measure was not repealed.¹

We have seen that the trustees were ordered to render to a committee of the assembly an annual account of the loan office. These committees met with great delay, and were put to considerable trouble by the trustees in arriving at a knowledge of the true state of the office. Also a report was spread that the office had been robbed, and one of the trustees told such a plausible story of the burglary, that for some time he escaped suspicion. But careful investigation proved that he had appropriated for his own use a large amount of the bills of credit, and that the supposed robbery was a myth. Suspicion, if not positive evidence of complicity in the crime on the part of some of the other trustees, induced the assembly in 1730 to appoint new trustees, and to provide for the punishment of the principal embezzlers.² Moreover, as the position of trustee had attached to it great influence over persons, estates, and votes at election, complaint was made against their being capable of sitting in assembly. Thereupon an agreement resulted by which they were to be removed quadrennially.³

In 1731 the assembly presented a bill for reissuing and continuing the paper money which by former acts was to be redeemed and destroyed, besides a further issue of £40,000 to be exchanged for torn and ragged bills. All those also which had been issued before 1728 were not to pass current after 1731. In his reply Gordon referred to the prejudice among British merchants against increasing the supply of paper money, as

¹ P. L. B., i, Proprietors to Logan, April, 1730.

² *Pa. Arch.*, 1st series, i, p. 272 *et seq.*; Franklin, *Laws of Pa.*

³ *Votes*, iii, pp. 149, 150, 200-202.

well as the necessity for a clause suspending the execution of the act until the pleasure of the king could be known.¹ But he eventually agreed to pass it. In the law the procedure of the loan office was very carefully regulated, and in addition to what we have noticed in the discussion of the previous laws, the following provisions were made: The bills were to be numbered and signed by four persons, who should take oath or affirmation for the true signing and delivering of them to the trustees, and who should also keep an account of all that they had thus signed and delivered. The trustees, whose number was now increased to five, should give a receipt for their delivery. They were, moreover, required to take oath or affirmation, and give security to the provincial treasurer for a faithful performance of their duties. They were, of course, to have the bills printed² according to a form specified in the act. In order to establish the identity of the original bills, counterparts of them should also be printed and numbered, but not signed. Of the bills and their counterparts the trustees should keep accurate accounts, to which a committee of the assembly should have access. The duty of this committee was to ascertain whether the sums at which the bills might be loaned were exceeded, and to inform the public of the general transactions of the office. In the presence of this committee, moreover, after the bills had been compared with their counterparts, and their number and values properly noted, they should be cancelled and destroyed.³

Since the introduction of paper money into Pennsylvania, the pound sterling was rated at 1.33⅓, and exchange had risen over 70 per cent. As debts were to be paid in provincial

¹ *Votes*, iii, pp. 149-150.

² Franklin was largely instrumental in securing the passage of this act. In fact his pamphlet entitled, "A Modest Inquiry into the Nature and Necessity of a Paper Currency," set forth its advantages so convincingly that he was given the lucrative job of printing the money. Phillips, *Sketches of the Paper Currency of the American Colonies*, p. 17; Franklin, *Works*, ii, p. 253, *et seq.*

³ Franklin, *Laws of Pa.*

money at its face value, this discrepancy operated injuriously upon those who by contract had claims for their payment in sterling. Hence it can be readily understood why the proprietors issued such imperative instructions to their governors not to pass any law that did not provide for the payment of sterling debts, duties to the crown, and rents, according to the rate of exchange between Philadelphia and London. In fact parliament in 1739 resolved to make inquiry into the nature and quantity of the paper money bills in America, and the expedients adopted for retiring them. At the same time the House of Commons sent an address to the king requesting that the governors of the various colonies should report upon the workings of the act 6 Anne, chap. 30. The assembly of Pennsylvania thereupon transmitted a complete account of the currency in that province.¹ But in spite of this action on the part of the home government, May 19, 1739, the assembly passed a measure providing for the re-issue for ten years of £68,889, 15s then outstanding. This was to be also used for the redemption of dilapidated currency. In addition to this sum, £11,110, 5s should be issued for 16 years at 5 per cent. Hence, £80,000 in new bills was printed. A novel device was stamped on them to offset the great quantities of counterfeits then in circulation, and the trustees were ordered to be on their guard against frauds practiced by the printer or his employees. Furthermore, they were directed to deliver only £1,000 at a time to the signers. Because they had been in the habit of allowing the mortgagers to be behindhand in their annual payments, they were also ordered to keep them strictly within the bounds of their contract. At the same time, the security for the performance of their duties was increased; and the death penalty for counterfeiting was introduced.² The law was passed on the promise of the proprietors to re-

¹ *Votes*, iii, p. 355-357; *Col. Rec.*, iv, p. 318 *et seq.*; P. L. B., i, John Penn to Gov. Thomas, March 29, 1739.

² Franklin, *Laws of Pa.*

ceive their quit-rents in currency rather than in sterling, though by doing so certain instructions were set aside. It was a prudent step on their part, since, owing to popular excitement, the favorable estimate of the Penns was rapidly disappearing.

On August 21 of the following year an instruction founded on the address of the House of Commons was sent by the Privy Council to Gov. Thomas, commanding him to pass no act whereby bills of credit might be issued in lieu of coin without a clause suspending its execution till the king's pleasure was known. It was stated that great inconveniences had resulted from the action of some colonies in passing laws for issuing paper currency, and in making its acceptance obligatory on all. By such action the statute of Anne had been frustrated, business thrown into confusion, and credit in the colonies weakened.¹ This did not trouble the assembly particularly, for it made several attempts to induce Thomas to consent to a further issue of the currency. His refusal was answered by a petition from the assembly to the proprietors, asking for his removal. The request, however, was denied.²

Four years later the assembly persuaded him to sign an act for printing £10,000 in bills of credit, to exchange for those which were torn and defaced. It was confirmed by the king in council, October 29, 1748.³ In 1744, also, a bill was brought into parliament⁴ to prevent the colonies from issuing paper currency for the payment of debts. Undaunted by this menace, the assembly, in 1746, declared that the use of the bills of credit had increased the trade of the province, and had been the cause of other great benefits to the people. By means of the interest which had accrued from them several thousand

¹ *Votes*, iv, p. 252.

² *Pa. Arch.*, 1st series, i, p. 628.

³ Hall and Sellers, *Laws of Pa.*

⁴ A petition signed by twenty-four merchants, against allowing the colonies to issue paper currency as a legal tender, was presented to the House of Commons. The proprietors thereupon made some effort to show several members the necessity of a system of paper money in the colonies. P. L. B., ii, T. P. to Thomas, May 5, 1744.

pounds had been paid into the exchequer for the king's use, and £4,000 had been expended in provisions for the garrison at Louisburg. As the time during which the bills were to circulate grew shorter, the sums to be loaned had to be so soon repaid and in such comparatively large amounts that the payments would be rendered difficult. This fact also, the assembly asserted, might cause the bills to be returned to the loan office and there remain in the hands of the trustees; consequently the funds which were intended to be raised by the interest of the money would be lacking. The argument that the scarcity of currency would be an embarrassment to business prevailed with Thomas. Hence, on March 1, an act for continuing the existing amount of bills of credit (£80,000) for 16 years was passed. It was provided that, during the first ten years of this period, the whole sum should be kept out by lending or re-issuing the yearly payments of the principal as they became due. Besides obliging applicants to pledge as security land, plate, or houses in double the value of the sum loaned by the trustees, it was further enacted that, after the expiration of the tenth year, one-sixth of the bills annually paid in should be cancelled and destroyed.¹ The act was accepted by the Board of Trade after consultation with prominent British financiers.²

On June 24 of the same year an act granting £5,000 for the king's use was accepted by the governor. This was to be taken from the bills of credit in the hands of the trustees for exchanging torn and ragged currency, a like amount being issued to replace them. Provision was made for the retirement of this sum in ten yearly payments of £500 each. For this purpose the treasurer should use the money annually payable to him from the excise. This act was confirmed by the king, October 29, 1748, though no mention of any suspending clause was made in it.³

¹ Hall and Sellers, *Laws of Pa.*

² "Case of the Inhabitants of Pennsylvania," 1746.

³ Hall and Sellers, *Laws of Pa.*

In 1748 and 1749 the question of the abolition of colonial paper money again came up in parliament. As alternative propositions, the removal of its legal tender quality, and the requirement that, if it were issued on an emergency it must be retired by rapid payments, were discussed. A bill providing against the issue of paper currency as legal tender in the colonies, and for the enforcement of royal instructions on that head, was accordingly presented. Those who had offered the bill agreed, however, to strike out the clauses which related to such instructions. Thereupon the proprietors drew up a statement concerning the necessity for the use of paper as a legal tender, particularly in Pennsylvania. This was given to leading members in the House of Commons, and appears to have had some effect, for the view of the proprietors prevailed. After several postponements, the House of Commons, "finding there was not such information before it as would enable it to properly consider such an important matter, voted an address to the king for an account of the tenor and amount of the paper currency then outstanding." The Board of Trade and certain members of parliament then directed the proprietors to allow no further issue of currency until the next session of parliament.¹ In February, 1749, however, an act to make current £5,000 in bills of credit was passed for the purpose of exchanging them for such as were dilapidated.² Then the assembly sent up a bill for making £20,000 current on loan, but it was persuaded by Gov. Hamilton to withdraw the measure until the attitude of parliament became better known.³

Soon after parliament, by the statute 24 Geo. II., chap. 53, restrained the northern colonies from creating or reissuing bills of credit, except on sudden emergencies. Pennsylvania was not included, as it had not exceeded the bounds of moderation, and because the paper which

¹ Penn MSS., *Supp. Proc.*, T. P. to Peters, Feb. 20, 1748, and Aug. 2, 1749; P. L. B., ii, to Hamilton, June 6, and July 31, 1749.

² Hall and Sellers, *Laws of Pa.*

³ *Votes*, iv, p. 108.

had been issued was so secured as to be more stable in value than that of New England and less injurious in its consequences. Hence, when the assembly of 1752 proposed to reissue the £85,000 already in existence, to postpone the time of redeeming it, and to issue £40,000 more, Hamilton cautioned it against the extension of time, and the danger of making so large an addition to the amount in circulation. Any action on the subject he thought might provoke the displeasure of the king,¹ and by preventing future applications to him render insecure the paper already in existence. Nevertheless, in the following year, the assembly resolved upon the continuance of the old and the emission of new bills, a sum being printed to exchange for those which were dilapidated. The amount of the new issue was £20,000. Hamilton declined to pass the bill without the suspending clause. The assembly urged that the statute just mentioned did not apply to Pennsylvania, and that Hamilton ought not to consider himself bound by the royal instruction which had been issued to a former governor. In truth it regarded the province as freed from the burden of the instruction by virtue of the fact that Pennsylvania was exempted from the operation of the statute. Hamilton, however, remained obdurate,² because in 1748 he had been instructed by the proprietors to consent to no bill for an increase of the currency, unless the suspending clause was inserted.³

Early in 1754 the assembly again resolved that the time for redeeming the currency then outstanding should be extended, that the amount of currency should be increased, and that a

¹ "The great objection to the bill for increasing the currency, is the opinion of the Board of Trade, in whose power it lies to determine the fate of the bill. A little later may be advisable, when the act to restrain the New England governments has passed somewhat from memory." P. L. B., iii, T. P. to Peters, July 17, 1752.

² *Votes*, iv, pp. 237-284.

³ MS. Instructions in the Pa. Hist. Soc. Library.

sum should be issued immediately to exchange for bills that were in poor condition. Thereupon it prepared a bill for £30,000, a large part of which was intended for the king's service. As Hamilton would not accept it, various expedients were suggested to meet the needs of the government.¹ He insisted that the excise, by the revenue from which the currency was to be redeemed, should not be continued more than four years. He claimed also that an extension of the excise, like that which was contemplated by the assembly, *i. e.*, for a period of ten years, would be an unnecessary tax on the people, and the fact that Gov. Thomas had allowed a similar extension was no reason for his doing so. He believed that, if the excise tax had been properly paid into the loan office, the necessity would not have arisen for such an extension of time. He then offered to make the period six years. In reply the assembly resolved that the excise was preferable to "toll and pound rates," and adhered to the bill as presented.²

Gov. Morris, at the beginning of his administration in October of the same year, pleaded the royal instruction of 1740, as well as the oath which both he and Gov. Hamilton had been compelled to take in England that they would obey the statute of Anne for the regulation of coinage in the colonies. The assembly declared that the royal order referred only to bills of credit issued on ordinary occasions, but not to cases of extreme emergency when the province was threatened with all the horrors of Indian war. The governor in his reply referred to the fact that parliament, in its statute affecting the eastern colonies, had fixed the term of the excise at five years. As similar conditions existed in Pennsylvania, he thought five years a proper period for its continuance in that province also. Furthermore, the proprietary party was in favor of introducing a bill for an addition to the paper money, and that it should be brought within the scope of the royal instruction by inserting in it the suspending clause. Then the Board of

¹ *Votes*, iv, pp. 304-310.

² *Ibid.*, pp. 311-315.

Trade might be induced to advise the king to withhold his approval, on the ground that the disposal of the money was left to the assembly alone, and not to the governor and assembly jointly, as the proprietors desired. This suggestion of course only fanned the flame of discord between the governor and the assembly. Indeed, the latter tried to arouse public sentiment in its favor by openly stating that, if its currency bill had been accepted, the losses inflicted by the French and Indians would not have been suffered.¹ But at a time so critical the assertion of privileges could not obscure the fact that money and supplies were a crying necessity. The governor was willing to yield on some points, but the assembly clung obstinately to its cherished claims. Still, upon repeated calls from Morris for aid, the house again presented a bill for the issue of £40,000, of which £20,000 should be paid to the governor for the king's use, and for that purpose expended as he might see fit. The income from the excise, which was to be continued for twelve years, should be used for the redemption of these bills. The other £20,000 should be set aside for the redemption of torn and ragged currency. Morris insisted on the introduction of the suspending clause and that the period of five years should be allowed for redemption. Moreover, he would not consent that the house should have unlimited control of the £20,000; for, as it was annually elected, and as many of the electors were not of English descent, he feared that the money might be diverted from the use intended, and employed to weaken the ties of dependence upon the mother country.² He was beset on every hand by imploring cries for aid, while the assembly posed as the champion of the popular rights and liberties. It is clear, however, that, under the circumstances, Morris was not justified in adhering so rigidly to the five year regulation; but, in spite of a petition sent by the

¹ Penn MSS., *Offic. Corresp.*, vi, R. Peters to T. P., Dec. 16, 1754.

² *Votes*, iv, pp. 342-391.

assembly criticising him for this policy, the Board of Trade appears to have sustained the governor's views.¹

Upon the receipt of imperative orders from the king, Morris again pictured the wide-spread misery, and besought the house to comply with the demand. The bill presented was as faulty as its predecessors. In response, however, to the request of Josiah Quincy it was withdrawn in favor of one for a grant of £10,000, and eventually of £15,000. This sum should be borrowed by the assembly on its own credit, and used in aid of Gov. Shirley's expedition. But the amount of ready money in the province was not sufficient to admit of a loan. Therefore it was agreed to issue notes, drawn by a committee of the house on the provincial treasurer and the trustees of the loan office, and payable to the bearer in one year at 5 per cent. interest. It was made receivable as cash in payment of the excise, and in discharge of debts due to the loan office.² Associations were then formed to circulate them. All this was done without the consent of Morris, who declared the matter worthy of the attention of the home government. For, said he, if an assembly that claimed the privilege of sitting when and as long as it pleased, and of keeping its proceedings a secret from the governor, could borrow and circulate notes as it chose, it might use them against the government under whose authority it acted, and on whose charter it wrongfully urged that its exercise of liberty was based.³ The house stated that the bills issued had been drawn on the treasurer and trustees merely for the payment of provisions for the expedition. But the fact remained that the governor had not given his assent.⁴ In March, 1755, moreover, the house sent up a

¹ Penn MSS., *Supp. Proc.*, T. P. to Morris, May 10, 1755; *Col. Rec.*, viii, p. 537.

² *Votes*, iv, pp. 391-2; Penn MSS., *Supp. Proc.*, Thos. Penn to Peters, Aug. 14, 1755.

³ *Pa. Arch.*, 1st series, ii, pp. 288, 368.

⁴ Phillips, *op. cit.*, p. 22; P. L. B., iv, T. P. to Hockley, July 3, 1755.

bill to grant £30,000 for the use of Gen. Braddock. The governor refused to sign it. Thereupon, in June, a bill for the issue of £10,000 to be exchanged for dilapidated currency,¹ and one for the issue of £15,000 to be employed in the king's service, were presented. The former was signed by the governor. To the latter he proposed certain amendments which occasioned its loss.

Up to 1746 we have noticed that the issue of paper money was based on reliable securities. Trade had therefore prospered. Imports had increased. The bills were eagerly sought for in other colonies. Public improvements, stores, houses, and the like had been erected on these loans, the terms of which were much more favorable than could be obtained from a private individual. Could this course have been continued, the loss by depreciation would have been very slight. But the exigencies of the colony no longer allowed this procedure. Large sums were required for immediate use. Loans could not readily be obtained. Even the issue of bills of credit based on the extension of the excise was inadequate to satisfy the demand. The desired amounts could not be obtained, except by issuing paper money to be redeemed by taxation within stated periods, a method fraught with the greatest danger.² But, since the interest on the bills of credit had come from the resources of the people, and was sufficient to pay the expenses of the government, taxes had not been levied for some years. As the governor remained firmly opposed to the extension of the excise, and although Franklin endeavored to induce the assembly to draw up a bill for the issue of £40,000 to be based on the extension of the excise for five years only,³ in November, 1755, it saw fit to present to the governor a bill for the issue of £55,000. This sum was to be redeemed by a

¹ The proprietors believed that the bills of credit issued for the purpose of being exchanged for dilapidated currency were often employed in other ways. P. L. B., iv, T. P. to Morris, Aug. 13, 1755.

² Phillips, *op. cit.*, p. 23.

³ Hazard, *Register of Pa.*, iv, p. 356.

general tax to be levied for two years on all estates, real and personal, at the annual rate of one shilling per pound, and twenty shillings per poll. The basis of the currency was thus changed from mortgages to the credit of future taxes on real and personal estate. But the governor refused to accept this bill. Then the house sent him another granting £60,000, to be redeemed by a similar tax of 6 d. per £ and 10 sh. per poll levied yearly for four years. At this point the angry controversy was hushed for a while by the agreement of the proprietors to make a gift of £5,000, though the assembly construed this as a gratuity for the exemption of their estates from taxation. In fact this idea was incorporated in the bill appropriating £60,000, of which £55,000 should be immediately issued in bills of credit. The exigencies of the time forced the governor under protest to accept it.¹ But the sum did not prove adequate. Hence in 1756, in order to hasten the payment of the proprietary gift, an additional issue of £4,000 was ordered. The redemption of this sum was to be effected by yearly payments made by the receiver-general to the trustees of the loan office.² Thus closed the experience of the province with paper money during the administration of Gov. Morris.

A bill providing for the issue of £40,000 was presented to Gov. Denny, but his objections to the opinion of the assembly in regard to taxation of the proprietary estates were fatal to this project.³ Thereupon the assembly offered £60,000 for the king's service, to be redeemed by an extension of the excise for twenty years. Denny declared that the clause concerning the disposition of the money by the assembly alone was inconsistent with his instructions.⁴ After the adoption of resolutions

¹ *Votes*, iv, pp. 419-525.

² Hall and Sellers, *Laws of Pa.*

³ *Votes*, iv, p. 587-94.

⁴ The proprietors had informed Denny that the act of parliament restraining the New England colonies was not binding on him, and that therefore he might permit the levy of an excise for five years longer than the time specified in the statute.

protesting against the invasion of its privileges, and dwelling upon the woes of the ravaged and depopulated province,¹ the assembly passed a bill for the issue of £30,000, September 21, 1756, in accordance with the governor's amendments. The sum was to be redeemed by an extension of the excise for ten years. £3,000 would thus be cancelled by the trustees every year. But as the prayers for aid at home, and the orders from abroad continued, the house sent up a bill for £100,000 to be raised by a general property tax. The bill contained several objectionable clauses,² but at length the governor felt obliged to accept it, March 23, 1757. Of this sum £45,000 should be issued in bills of credit to be redeemed by a county tax of one shilling per pound, and ten shillings per poll. Every year for four years the treasurer should pay to the trustees of the loan office out of the money received by him from the taxes, not only the quarterly installment of £13,750, as directed in the act for £60,000, but also £11,250, the fourth of the sum to be presently issued, in order that the same might be cancelled. If the tax as levied was not sufficient to redeem the entire amount of £100,000 in four years, the period might be extended so long as was necessary.³ The issue of £45,000 was speedily exhausted, and more was needed to pay the troops. Hence, on the 17th of the following June, the remaining £55,000 was issued under similar regulations.⁴

On April 22, 1758, an act was passed which granted £100,000 to the king in bills of credit, and continued the several acts of assembly for redeeming them. As the several sums of £55,000, £30,000 and £100,000 had been expended, and as still more was needed for supporting the troops, £100,000 should

Much to the disgust of the proprietary party, he showed this instruction to certain members of the assembly. Penn MSS., *Offic. Corresp.*, viii, R. Peters to T. P., Sept. 22, 1756.

¹ *Votes*, iv, pp. 595-603.

² *Ibid.*, pp. 668-703.

³ Hall and Sellers, *Laws of Pa.*

⁴ *Ibid.*

be issued. The previous assessments were to be continued for three years more, so that the taxes should all be collected by March 10, 1764, at which time the bills should cease to be current. For the period of three years after October, 1760, the treasurer was to pay annually into the hands of the committee of the assembly to audit public accounts £33,333, 6sh., 8d., which the committee was to cancel and destroy. Also, the period appointed for collecting the tax should, if necessary, be extended.¹ Accordingly, in April, 1759, the period was extended three years.² Then, inasmuch as the time limited by the acts passed in 1739 and 1746 had nearly expired, a measure was laid before the governor providing for the reissue of all the bills of credit which had already been emitted on loan. Part of them had been paid in and cancelled. Hence the funds hitherto raised by the interest for the support of government would be wanting, and there would again be a dearth of currency. It was stated, moreover, that the expenses of government on several occasions had been paid out of money voted for the king's service. Many persons who had mortgaged their property for bills of credit were rendered incapable of paying these taxes. The fact that so much property had been destroyed in the ravages of war injured the securities. If the trustees should sell the property, great distress would thereby be caused, and the owners of it would become a burden on the community. But, in spite of these arguments, the measure failed to meet with the governor's approval. It seems, however, that Gen. Stanwix and Col. Hunter had represented to the assembly that money was needed immediately to pay the expenses of the last campaign, as well as those of a proposed expedition to the west. Hence a rider was attached to the bill, providing for the issue of £36,650 additional, in order to enable the trustees to lend £50,000 to Col. Hunter, who was an agent in the king's service under the commissioners of the treasury. With this addition, the gov-

¹ Hall and Sellers, *Laws of Pa.*

² *Ibid.*

ernor accepted the bill, and the assembly was thought to have shrewdly gained a point. But the Board of Trade in recommending the repeal of the act criticised it in this very particular, viz., that there was no connection between the main part of the measure and the provision for the additional issue and loan to Col. Hunter. The king in council thereupon declared the act to be void.¹ The bills were issued, however, before the repeal of the law was made known. They were then promptly recalled.²

On April 12, 1760, Gov. Hamilton consented to the issue of £100,000 in bills of credit, to be redeemed by a tax of eighteen shillings per pound and twenty shillings per poll. For the purpose of cancelling them the treasurer annually, for three years following 1767, should pay £33,333 6sh. 8d., to the committee of the assembly.³ Again, urged by letters from Pitt and Amherst, the assembly in 1762 agreed to issue £100,000 in bills of credit. For the redemption of a part of this (£30,000), money was to be taken from the appropriation made by parliament to aid the colonies in defraying the expenses of the war, while the rest was to be redeemed by an extension of the excise till 1772. Certain provisions irrelevant to the substance of the measure were introduced, in order that, by forcing the acceptance of what was disapproved, the rejection of the whole might be prevented. Because of these defects Gov. Hamilton peremptorily refused to approve the bill. Then the assembly offered to grant for the king's service £23,500 in bills of credit, to be redeemed by money taken from the appropriation of parliament.⁴ On May 14, this was accepted by the governor.⁵ For the same purpose in Oc-

¹ *Col. Rec.*, viii, pp. 538, 557.

² Phillips, *op. cit.*, p. 25.

³ Hall and Sellers, *Laws of Pa.*

⁴ Acts supplementary to this were passed in 1763, 1767 and 1771. Miller, *Laws of Pa.*

⁵ In 1759 and 1761 agents were appointed by the assembly to receive the share of Pennsylvania in the appropriation made by parliament. They were to pay the

tober, 1763, the assembly voted £24,000. This sum was to be redeemed by the surplus money arising by virtue of several acts of assembly, and by an extension of the excise for three years. Certain commissioners, with the consent of the governor, were to use the money to support 825 men for the defense of the province.¹ In May of the following year,² also, £55,000 more in bills of credit was granted for the king's service. They were to be redeemed by a continuation of the taxes; and for their cancellation, the treasurer annually for two years after October, 1770, was to pay to the committee of the assembly £27,500.

In April, 1764, the House of Commons resolved that an address should be presented to the king. This was for the purpose of requesting the Board of Trade to lay before parliament an account of the bills of credit issued in the plantations since 1749, of the time for redeeming and cancelling the same, and of the character of the funds appropriated for that purpose.³ The report of the Board caused parliament, September 17, 1764, to pass an act—4 Geo. III, chap. 34—prohibiting the issue of bills of credit as legal tender, or the extension of the legal tender quality of those already in existence beyond the periods of calling in and redeeming them. Any governor who

money to the trustees of the loan office, and they in turn to the committee of the assembly. The money was used for redeeming the sums granted to the king and for paying public debts. *Ibid.*

¹ Miller, *Laws of Pa.*

² In January, 1764, during a discussion on the subject of paper money, the question was seriously debated whether proprietary quit rents should be excepted from payment in bills of credit, or whether a new species of notes, bearing interest but not intended to circulate as legal tender, should be issued. When the question was put to the vote, however, "such was the unaccountable attachment of a majority of the members to the usual mode of raising money, and their ill-judged fear of going out of the beaten track to try a new method of making money" that the former was the method chosen. *Pa. Mag. Hist.*, v, pp. 68-9.

³ *Pa. Arch.*, 1st series, iv, 173. Pennsylvania in 1764 had £500,000 in bills of credit outstanding. Of these, £293,000 remained in 1766, and it was believed that by 1773, the whole amount would be redeemed. *Votes*, v, p. 449.

should assent to bills containing provisions inconsistent with what was here specified, was made liable to a fine of £1,000, to dismissal from office, and to incapacity for future service. Petition after petition was laid before parliament against this statute, and the agents were repeatedly instructed by the several colonial legislatures to secure, if possible, its repeal. But the applications proved fruitless.

Requests for a further issue of currency in Pennsylvania, however, became too strong to be ignored. A number of merchants in Philadelphia formed a company to issue £20,000 in promissory notes of the denomination of £5, and payable on demand with 5 per cent. interest.¹ But they were compelled to discontinue the practice, for the assembly declared that the influence of such notes was injurious to the credit of the provincial currency.² Still, in order to appease temporarily the demand, the assembly agreed, May 20, 1767, to issue £20,000 in bills of credit for the support of government, and the payment of public debts. By the use of the revenue derived from the excise, it should be redeemed in yearly installments extending over four years. Nothing was said as to its legal tender quality, but the change in this respect was apparent in the wording of the bills. In those issued prior to this time the words had been, "This bill shall pass current for," etc.; but now the bills read, "This indented bill of — shall entitle the bearer to receive of the provincial treasurer, the like sum of —, in bills of credit now current." This evasion of the statute, however, might be so construed as to give them the quality of legal tender.

On the 18th of February, 1769, the assembly passed an act to "enable the managers of contributions for the relief and employment of the poor" in Philadelphia to raise £14,000 in bills of credit. The bills should be similar in form to those just mentioned, but with the substitution of the words "treasurer of the contributors for relief, etc.," for the words, "pro-

¹ Phillips, *op. cit.*, p. 28.

² *Votes*, v, p. 518.

vincial treasurer." To redeem them certain property was to be sold, or a tax might be levied on all the estates in Philadelphia and vicinity. At the same time an act similar to that of 1767 was passed to raise £16,000 for the support of government and the payment of public debts. Provision was made for the cancellation of these bills within nine years.¹

In the following May the house sent Gov. John Penn a bill providing for the issue of £120,000 on loan. In reply the governor contended that, as the king's representative, he had a share with the assembly, in nominating the trustees of the loan office, and in specifying the use to which the interest-money should be put. The assembly, however, refused to make concessions, and the bill was dropped.² About two years later the house presented to Gov. Richard Penn a similar bill for the issue of £200,000. But his objections to the establishment of loan offices in the various counties, and to the method of appointing the trustees of the same, put an end to this bill also.³ But, March 21, 1772, an act was passed to issue for the support of government £25,000, to be redeemed by an extension of the excise for ten years.⁴ The following year £12,000 was issued in bills of credit, to be redeemed by a tonnage duty.⁵ About the same time £150,000 was ordered to be issued on loan,⁶ but this attempt to resuscitate the loan office failed, because several of the signers and trustees failed to act.⁷

We have thus traced the history of the issue of bills of credit in Pennsylvania during the colonial period. They amounted in the aggregate to upwards of £950,000. The development of the controversies incident to these issues reveal a steady and continuous increase of the power of the people and decrease of that of the proprietors. An important episode of this financial controversy, which at the same time had a great constitutional significance, was the successful attempt to tax the public domain and private estates of the Penns.

¹ Miller, *Laws of Pa.*

² *Votes*, vi, p. 161.

³ *Ibid.*, p. 378, *et seq.*

⁴ Miller, *Laws of Pa.*

⁵ *Ibid.*

⁶ *Votes*, vi, p. 517.

⁷ Phillips, *op. cit.*, p. 29.

CHAPTER X.

TAXATION OF THE PROPRIETARY ESTATES.

THE earliest reference to the levying of taxes in Pennsylvania is to be found in the "Laws agreed upon in England." The fourth section of these proposed enactments reads as follows: "That no money or goods shall be raised upon, or paid by, any of the people of this province by way of a public tax, custom, or contribution, but by a law for that purpose made; and whosoever shall levy, collect, or pay any money or goods contrary thereunto, shall be held a public enemy to the province, and a betrayer of the liberties of the people thereof."¹ This was further confirmed and enlarged by the 59th section of the "Great Law" passed at Chester in December, 1682, which expressly declared that no tax should be levied, except by a law "for that purpose made by the governor and freemen" of the province, and unless it continued for no longer "than the space of one whole year."² In view of the fact that the royal charter distinctly states that parliament might levy a tax on the province without the consent of the "proprietary or chief governor and assembly," the language of this early law would seem to imply a defiance of parliament similar to that which the colonies exhibited eighty-three years later. But it is very doubtful if any such idea existed in the minds of the men who enacted the law. Penn himself proposed it,³ and his allegiance to England was too well known to be questioned. The law may be regarded therefore as merely the expression of the

¹ *Charter and Laws of Pa.*, p. 99.

² *Ibid.*, p. 123, confirmed in 1693, p. 203.

³ Penn MSS., Ford *vs.* Penn.

opinion of the proprietor and assembly regarding arbitrary or irregular taxation, and not as a prophecy of antagonism to England.

In March of the following year a bill was brought into the assembly, providing that the expenses of the several counties should be met by taxation, and that the members of the council and assembly should pay only half of their assessments. The latter provision was unfavorably received,¹ but a law was enacted that the county court should be empowered to "assess and lay such taxes upon the county" as should defray its expenses, "so that it be equal and according to proportion." One-half of the tax was to be raised from land, and the other half by poll; but non-residents should pay one-half more in proportion than residents.² In the session of 1693, moreover, a law was enacted to provide funds to defray "the necessary charges in each county for the support of the poor, building of prisons, or repairing them, paying the salary belonging to the assembly, paying for wolves' heads, the judges' expenses, with many other necessary charges." It was stated that yearly, or oftener, as the case might require, the county court should estimate the expenses of the county, and make the proper assessments therefor. But the grand jury might also present any sum needful to be raised. The rate of assessment was to be the same as in the provincial land tax act of the same year.³ The power thus given to the county court to levy taxes without the approbation of the grand jury, appears to have caused con-

¹ *Votes*, i, pt. i, pp. 17-20.

² *Charter and Laws of Pa.*, p. 147. The following orders, issued October 6, 1685, by the justices of Chester county, in accordance with this law, may be cited as an example of the procedure. Upon every hundred acres taken up and surveyed was levied 2 sh. 6 d., and in the case of non-residents, 3 sh. 9 d. The poll tax levied on all male citizens between the ages of 16 and 60 was also 2 sh. 6 d. The constable was to give the names of the inhabitants of the townships to the sheriff, the principal collector, who was allowed a percentage on his receipts, Hazard, *Register of Pa.*, v, p. 157.

³ *Charter and Laws of Pa.*, p. 233.

siderable dissatisfaction; for in a list of grievances submitted by the assembly to Lieut. Gov. Markham, in April, 1694, was the following: "That the power given by the late law for raising money by the justices of the peace in their respective counties may not be made use of to the dissatisfaction of the country, but that the justices may be cautioned that what money is raised to defray the public charge of the country may be done by the approbation of the grand jury, or other sufficient inhabitants of the several counties, to assist in and approve the several taxes to be raised, and to have the hearing and examination of the accounts of the several receipts and disbursements."¹ In spite of this protest, however, it appears that the assembly itself, the following June, offered for the approval of Gov. Fletcher a bill of the same objectionable character. He, accordingly, refused to pass it, unless the method of taxation should be made more conformable to that employed in England.² In 1696, however, it was enacted that the county court and grand jury, together with any three of six assessors to be elected by the freemen of the county, "should calculate the public charge of the county, and * * * allow all just debts, dues and accounts."³

In 1715 the procedure was again changed.⁴ Three commissioners for each county were named in the act. They should order the sheriff to summon the six assessors to meet them at the time the sessions of the county court were held.

¹ *Col. Rec.*, i, pp. 457, 466; *Votes*, i, p. 78-9.

² *Ibid.* In October, 1695, the grand jury of Chester county made an assessment of 1 d. per £ and 3 shillings per poll. Every acre of land under cultivation was rated at £1 per acre; and all uncultivated land at £10 per hundred acres, while for every hundred acres in the woods, £5 was the rate. On horses, cattle, sheep, negroes, mills, and on "handicrafts that follow no plantations for calling," a tax was also levied. Hazard, *Register of Pa.*, v, p. 158.

³ *Charter and Laws of Pa.*, pp. 256-258.

⁴ Several of the details of this procedure, it may be said, appear in acts passed in 1696, 1699, 1700, and 1705. *Ibid.*, pp. 253-259, 280-282; Bradford, *Laws of Pa.*

They were furthermore to issue warrants to the constables of the townships to bring to the assessors the names of the residents therein, as well as a detailed statement of their property. The right to hear and determine appeals concerning unjust taxation was also transferred from the assessors to the commissioners; and the collectors appointed by the assessors were to render their accounts to the provincial treasurer. Lastly, the uses to which the money should be put were distinctly specified, and the right of appropriation by the assembly alone asserted.³ In 1724 the tenure of the commissioners became elective, and they were made amenable to the county court. In the same act the commissioners and assessors were directed to exempt from taxation "all unsettled lands, although formerly rated."² Eight years later the tenure of the commissioners was limited to three years, and both they and the assessors were ordered to submit their accounts yearly to the county court and the grand jury.³

The first provincial tax bill was prepared in 1693, in response to orders from the queen for assistance against the French. The committee of the assembly chosen to consider that part of Gov. Fletcher's speech which related to the granting of supplies, reported that there was a "necessity of raising money to support the government,⁴ * * * by tax on strong beer and ale retailed, by deer skins, * * * by the poll, by land per hundred acres, by rent of houses, [and] upon wine and cider imported;⁵ but "with respect had to the moderate assessment of all uncultivated and unprofitable lands."⁶ Thereupon a law

³ Bradford, *Laws of Pa.*

² *Ibid.*

³ Franklin, *Laws of Pa.*

⁴ A resolution of this tenor was passed by the assembly in 1684. *Votes*, pt. i, p. 27.

⁵ About 1718 the tax on imported wine and cider was extended to horses, cattle, sheep, swine, beef, pork, butter, cheese, hops, flax, molasses, negroes, immigrants, convicts, and vessels. Some of these laws were repealed by the crown, particularly those taxing negroes and vessels, but whenever this occurred, the law was reenacted by the assembly. Bradford, *Laws of Pa.*

⁶ *Votes*, i, pt. i, pp. 69-71.

was passed imposing for one year a tax of 1d. per £ on the clear value of all property, real and personal. From the imposition of this tax the proprietor, and the deputy governor were exempted, as were also persons who had "a great charge of children, and become indigent in the world," and were "so far in debt that the clear value of their real and personal estate" did not amount to £30. But freemen who had been out of their servitude six months, and who were not otherwise rated in the act, nor worth £100, should pay a poll tax of 6 shillings. For the assessment and collection of these sums two or more members of assembly¹ within the respective counties, acting with three justices of the peace or substantial freeholders, were to assess the rates specified, and appoint collectors. By a warrant issued by a justice of the peace, the assessors should direct the constables to bring in certificates of the names of the inhabitants, and of the property possessed by them. The assessors were then to ascertain the valuation of the property and assess it, but with due regard to the ability of the people, and the amount of unprofitable land they held. A statement of the assessment and collection was to be rendered to the next assembly. Provision, furthermore, was made for the punishment of officers who failed to discharge their duties, for the sale of property upon non-payment of taxes, and for appeal to any three of the assessors in case a wrong had been done to any individual in the assessment of his taxes. The amount raised was to be expended by the governor and council, but an account of the items should be rendered to the assembly.² In 1696, 1699, 1700, 1705, 1715 and 1717, when general provincial taxes were levied, and in all the acts for raising county taxes, the estates of the pro-

¹ The participation of the members of assembly in the assessment of taxes was excluded by the act of 1699 and subsequent acts. *Charter and Laws of Pa.*, p. 280; Bradford, *Laws of Pa.*

² *Votes*, i, pt. i, p. 86; *Col. Rec.*, i, p. 461; *Charter and Laws of Pa.*, pp. 221-224.

prietor and of the lieutenant governor were again expressly exempted from taxation.¹

Having thus indicated the nature of the taxes levied prior to the issue of paper money, as well as the methods prescribed for their collection, we are ready to consider the taxation of the proprietary estates themselves. The position of the proprietors was a peculiar one. They were feudal lords of Pennsylvania. True, their right to make laws was modified by the necessity for the advice and consent of the assembly, but that did not destroy the essentially feudal character of the grant. They were the representatives of the king. They were great landholders. Since they were feudal lords, and sharers by delegation in the prerogatives of the crown, it would seem absurd that a dependent colonial legislature should assume the power of taxing their estates. But whatever may have been their legal powers, they were in reality private men possessed of vast estates, and holding the position of hereditary governors. Moreover, the power of taxation in general words is given by the charter to the proprietor and assembly, and no restrictions as to the objects of taxation are imposed. The proprietors had hitherto been expressly exempted from assessment. But now the needs of the country called for increase in taxation. The progress of the democratic spirit demanded that feudal rights of exemption should be abolished, and that, as owners of private property, the proprietors should be considered in the light of private individuals. In the public management of their property they might not be subject to the colonial legislature, but in their private ownership they were on a level with the poorest freeholder. To crown all, any plea for exemption, which they might choose to make, lacked the powerful support of precedent in other provinces, both royal and proprietary.²

¹ *Charter and Laws of Pa.*, pp. 253-256; Bradford, *Laws of Pa.*

² In Maryland, by an act passed in 1715, only beneficed clergy, persons who received alms and slaves past labor were exempted from taxation (Bacon, *Laws of Maryland*). There were apparently no exemptions in South Carolina. An act

The earliest utterance of the proprietors on the subject, is to be found in a letter to one of their officers,¹ March 29, 1748. In it they declared that, although they were willing to assist in making full legal provision for the defense of the province, they would not personally contribute, for the Board of Trade had told them that they were no more liable to taxation than were the royal governors. In fact they hinted that Pennsylvania was the only colony that expected protection at the expense of her governors. Three years later the assembly, in a representation on Indian affairs, declared that the vast estates of the Penns were not liable to taxation by England, and could not, by any law then in existence, be assessed in Pennsylvania.² In their reply to this representation, however, the proprietors asserted that they were not desirous of avoiding a proper contribution to any reasonable public object. They stated also that the expenses they incurred in furthering the interests of the province were greater than any sum which the taxation of their estates would yield.³ But this contention availed less and less as the war with the French advanced. The counter claim was raised that the colonists were overburdened with taxes, and the effect of this was enhanced by the cry of distress which came from the districts that had been laid waste by the enemy. The proprietors clung feebly to

was passed in 1703 (Cooper, *Carolina Statutes*, ii, p. 206) for raising the sum of £4,000 "on real and personal estates, and of and from the profits and revenues of the inhabitants of the province." It provided that the estates, stocks and abilities of all and singular, the inhabitants, merchants, and other persons residing in South Carolina, should be subject to taxation. In Virginia, by an act passed in 1705 (4 Anne, chap. 7, sec. 8) only the governor and his family and the beneficed clergy were exempted from being tithables. An act passed in 1748 (22 George II., chap. 21), provided that the exemption should extend to the president, masters and fellows of William and Mary College. There were no exemptions in New York (Parker, *Laws of N. Y.*, pp. 373, 381, 395).

¹ P. L. B., ii, T. P. to Lardner.

² *Votes*, iv, pp. 362-3.

³ *Ibid.*, pp. 362-67; P. L. B., iii, T. P. to Hamilton, Oct. 26, 1752.

their claim, but, as time passed, it became evident that they must resign it, at least in part.

While treating of the subject of paper money, the bill of 1755, which provided for the redemption of £55,000 by the taxation of all estates, real and personal, has been referred to. Gov. Morris, who had previously been chief justice of New Jersey, in reply to the assembly's message, insisted that the estates of the proprietors should be exempted from taxation. He quoted that portion of his commission which forbade him to do anything whereby the property of the Penns might be injured. "This proviso," said he, "being contained in the body of the commission from which I derive the power of acting as governor, it is not only the highest prohibition to me, but any law that I may pass contrary to that proviso, I imagine would be void in itself for want of power in me to give it a being." He declared that, even without instructions from the proprietors for that purpose, he would not consent to a bill for the taxation of their estates. He argued that not only were all governors, from the nature of their office, whether hereditary or otherwise, exempt from the payment of taxes, but that, on the contrary, "revenues were generally given to them to support the honor and dignity of government," and to enable them to discharge the duties of their station. He stated that this exemption of the proprietary estates from taxation, which arose from such a conception of the nature of government, was enforced by the positive law of the province. He asserted that for taxes to be imposed upon the estates of the proprietors was contrary to the practice in other proprietary governments. He declared, further, that the proprietors through the governor had assented to several laws vesting in the people the sole choice of the persons who assessed and levied taxes, without reserving to themselves or their deputy a negative upon such selection, which by charter they were privileged to do. This had been done, said he, with the express proviso that the proprietary property should not be taxed.¹ The assembly re-

¹ *Votes*, iv, pp. 421-2.

plied that an equitable tax would free their estates from a troublesome enemy, so that yielding a part to save the whole was certainly not an encumbrance. It claimed that it did not tax the proprietors as governors, but as fellow subjects, landholders, and possessors of an estate. It even went so far as to assert that the proprietors did not govern, though their lieutenants did. But if any proprietor did actually exercise the office of governor, and had a support allowed, he would still be liable as a landholder for the security of his property. Then it proceeded to argue that the tenants on the king's lands were by every act of parliament levying a land tax compelled to contribute, even if they deducted the amount of the assessment from their rents. The governor, it believed, had referred to the statutes of the province under which the county rates were levied, as furnishing instances of the exemption of the proprietary lands from taxation. The assembly claimed that they could not be so used, because the revenue accruing under them was employed for purposes beyond the scope of proprietary responsibility, such as the payment of assemblymen's wages, and rewards for killing wolves, crows, foxes, and the like. They were in fact local enactments, not general laws passed "to enforce a natural right."¹ It also failed to see the equity in allowing the proprietors to have a negative in the selection of assessors, for that would give them equal weight with the representatives of the people in making that choice, though they might not pay a hundredth part of the tax. It declared on the other hand, that, if it had the exclusive right to determine the method by which the officials would be chosen, the assessments would be impartial, and none would be spared for favor or affection.²

¹ It is to be noticed how careful the assembly was to avoid mention of the acts of 1696, 1699, 1700, 1705, 1715, and 1717, for the taxation of the province as a whole, and in which the estates of the proprietor and lieutenant governor were expressly exempted.

² *Votes*, iv, pp. 422-426.

The governor, in response, asserted that the alleged distinction between governor and landholder had no existence in law. Then, adopting a popular maxim, he said that the proprietors had no right to vote in the election of representatives, for they already had a voice in the legislature through their deputies. Thus, from the very principles of the English constitution, the assembly could have no power to tax them as freeholders or fellow subjects. It assuredly could not have authority over those from whom it derived authority. The proprietors held the government and soil under the same grant. The title to both was centered in the same persons, and could not be separated or divided without destroying their actual power. The fact that the proprietors did not personally govern was owing to no lack of a legal right so to do. He maintained that in theory the king paid no taxes. For parliament to tax the crown directly would be a destruction of the king's government. The proprietors, therefore, as the representatives of the crown, were entitled to a like exemption. Finally, he stated that the entire property of the people was subject to the control of the legislature, and of that the governor was an essential part.¹

This last assertion of the governor brings up the question: which branch of the legislature had the power to dispose of the public money? We have seen that in earlier enactments the governor and council were authorized to expend the sums voted, but were required to give an account of them to the assembly. In August, 1708, moreover, the assembly said, "We do not pretend to direct the way and manner the governor did or should dispose of those supplies; yet we conceive it our business to inquire * * * whether they are applied for [the] support of government."² After 1715, however, it assumed to itself the power of disposing of the public money. Now, in 1751, the proprietors had expressed the intention not to allow a currency or excise law to be passed, unless provis-

¹ *Votes*, iv, pp. 429-433.

² *Col. Rec.*, ii, p. 416.

ion was made in the act for the appropriation of the sums accruing under it, or it was left to the governor and assembly jointly to direct how they should be used. But they did not immediately embody this in an instruction to the governor, for they had been told by Gov. Hamilton that, as such an instruction might raise a violent commotion among the people, and be considered an attack on their liberties, it was a serious matter, and should not be proposed unless they were going to adhere to it. The wrath of the assembly would be unbounded, and as it had a large amount of funds on hand, it could well afford to embark on a contest with the proprietors. As it had also the control of the office of treasurer,¹ the interest on every new loan of the paper money increased its strength, and diminished its dependence on the governor, the proprietors, and the crown.² At length, however, the proprietors determined to insist upon their rights,³ and in May, 1752, sent Hamilton an instruction to the effect that the appropriation of public money should be subject to the joint direction of himself and the assembly.

In the bill offered in 1754 for a grant of £30,000 to the king, the house had named the treasurer, collectors and excise officers, though the right of appointing them belonged properly to the executive. Besides, the trustworthiness of officials designated by the assembly might be as questionable as that of appointees of the governor. A constitutional principle was

¹ In 1693 the treasurer was appointed by the governor (*Charter and Laws of Pa.*, p. 223). In 1696 and 1699 he was named by the assembly (pp. 255, 263, 281). In 1700, at the request of the assembly, the proprietor appointed him (*Col. Rec.*, i, p. 576).

² Penn MSS., *Offic. Corresp.*, v, T. P. to Hamilton, July 29, 1751; *vv.*, March 18, 1752.

³ In 1757 it was declared, by vote, in the House of Commons, that the assembly of Jamaica had no right to raise and apply money without the consent of the governor and council, nor to appoint a person to receive and issue it. Such a claim, it was thought, was unconstitutional, and derogatory to the rights of the crown. P. L. B., v, T. P. to Hamilton, July 7, 1757.

at stake, and the question was being fought out while many parts of the province were overrun by the Indians, and the people were agitated by reports of their atrocities. Seeing that, with regard to the appointment of the officers, he could not gain his point, Gov. Hamilton insisted that commissioners should be named in the bill to act with himself in disposing of the money. The assembly replied that the representatives of the people had the sole right to determine not only the sums to be raised for the crown, but the manner of raising them. The governor very properly rejoined that this power was not inherent in the house, and while he understood it to imply that no money should be levied from the people without their consent, he nevertheless had the privilege of exercising his judgment to approve or reject bills of supply. He asserted that the governors were invested with half of the legislative authority, and were equally concerned with the assembly to consult the ease, freedom, and welfare of the people. Hence they must have the right to rectify any mistakes likely to be committed by the legislative branch. If the governor were so invested with a share of the legislative power, he certainly had discretionary authority to object to what he considered amiss; otherwise he would be merely an instrument to ratify the transactions of the assembly. But the house strenuously denied that the governor possessed any such privilege as he had claimed.¹

Gov. Morris, his successor, also urged his right to amend bills for raising money. To the claim of the assembly that its powers in such a case were similar to those of parliament, his reply was substantially as follows: "The constitution of England is of long standing, founded upon ancient usage and ripened by time and the wisdom of ages to its present perfection. There the king, lords, and commons make up the supreme power, to each of which the constitution has assigned particular and peculiar prerogatives, rights,

¹ *Votes*, iv, pp. 312-316.

and privileges, in order to keep up a proper balance and make them * * * a check upon each other. The constitution of this province is founded upon certain royal and proprietary charters, being subordinate and no way similar to that of England, nor composed of the like constituent parts. Here the whole power is lodged in the governor and assembly, who have all along exercised equal legislative powers, each of them having a right to propose laws and to amend what is proposed by the other. Till, therefore, you can show that the constitution of this province is similar to that of England, composed of the like parts, and that each of them have the like or similar powers and privileges, you can found no claim upon the usage of parliament for having your money bills passed without the governor's amendments." ¹

This opinion of the governor was fully endorsed by the proprietors, who also stated that no money should be expended, except for some purpose specified beforehand by the governor. For if the governor and council, said they, did not have the management of operations in the field, to whom should the orders from the king be sent? In fact, they were repeatedly advised not to part with their right to direct the governor to amend money bills as he should see fit; and it was hinted in England that Pennsylvania had no government at all.² But the pressure of circumstances forced the governor to yield to the wishes of the assembly.³ Thereupon it made the concession that certain commissioners, usually seven in number and named in the act, should with the consent of

¹ *Votes*, iv, p. 512.

² Penn MSS., *Offic. Corresp.*, viii, R. Peters to T. P., Sept. 22, 1756; *Supp. Proc.*, xv, Dec. 8, 1758.

³ Toward the close of Gov. Morris' administration the proprietors informed him that he was no longer to insist upon joint disposal of the public money, but to "join with the assembly in all such measures by prudent methods" as might "conduce to the safety of the province and carrying the commands of the crown into execution." Penn. MSS., *Offic. Corresp.*, vii, Proprietors to Morris, Oct. 5, 1755.

the governor dispose of the money in supporting troops, in giving supplies to distressed settlers and friendly Indians, in holding treaties with the latter, and in entering into contracts for the king's service. In the several acts passed between 1755 and 1762 the governor's participation in the disposal of the money is distinctly affirmed ; but in cases where a surplus existed, the assembly assumed the sole power of expending it.¹

Resuming again the discussion of the taxation of the proprietary estates, we find that the distress of the people from the attacks of the French and Indians, which had alarmingly increased, especially after Braddock's defeat, were vividly depicted to the assembly in the messages of the governor. That body was now determined to avail itself of the serious condition of affairs in order to carry its point. The bill for £60,000 to which allusion has been made, and which was presented in its first form in July, 1755, seemed to be aimed directly at the proprietors, for it levied a tax on the quit-rents and on unimproved, unsettled, and unprofitable land.² Moreover, the house inserted a clause by which the propriety of taxing the estates should be decided by the crown. Hence it was provided that, if at any time during the continuance of the act the crown should think fit to declare in favor of the proprietors,³ the tax, if assessed, should not be levied, or, if levied, should be refunded, and an additional tax imposed on the people. Gov. Morris declared that the proprietary quit-rent was not liable to taxation.⁴ He showed also that the king

¹ Hall and Sellers, *Laws of Pa.*

² P. L. B., iv, T. P. to Morris, Aug. 13, Oct. 4, and Oct. 26; and to Peters, Nov. 14, 1755.

³ The proprietors were not averse to a legal decision. Penn MSS., *Supp. Proc.*, T. P. to Peters, Oct. 25, 1755.

⁴ The proprietors wrote to Morris that they would have preferred that in his amendments to the bill he had not confined his arguments to proprietary quit-rent, but had extended them to quit-rents in the other provinces as well, which, they stated, would have sounded much better in England. P. L. B., iv, T. P. to Morris, Oct. 26, 1755.

could not assent to parts of an act; but as the provision in the bill was tantamount to an application for a royal decision, he could not speak his mind plainly. In effect it gave an immediate legislative power to the crown, and implied an admission of the existence of such a power, and that it could be called into exercise when the safety of the people required it. But as there was no provision in the royal charter for the exercise of this power, there appeared to be a latent defect in the constitution.¹ The assembly then declared that, if the governor persisted in his opposition to the bill, it would request the king to remove him from office.² At this juncture, in order to break the force of the argument which had been the chief apparent support of this bill, the proprietors directed that £5,000, which was more than ten times the amount that would be realized by a tax, should be paid into the public treasury from the arrears of the quit-rents. This was to be regarded, however, as a free gift, not as made in lieu of taxation, whatever might be the opinion of the assembly about the matter.³ Thereupon, November 27, the governor signed the bill. It levied 6d per £ on all real and personal estates, and a poll tax of ten shillings on all freemen who were not worth £30, except those who were employed in the king's service. The proprietary estates were exempted, but the £5,000 was to be paid immediately by the receiver general to the commissioners.⁴ As some owners of land whereon improvements had been made did not reside in the same county or district where the land was situated, and as it might therefore be difficult to collect the tax, it was provided that the tenant should pay it, and deduct it

¹ *Pa. Mag. Hist.*, iii, p. 24.

² *Votes*, iv, pp. 500-507.

³ Penn MSS., *Offic. Corresp.*, vii, Proprietors to Morris and to the assembly, Oct. 5, 1755; *Votes*, iv, 524.

⁴ "The £5,000 was an act of kindness, not a compact instead of a tax, and the enactment that the receiver general should pay it immediately is unjust. If the tenants do not pay their arrears, how can we pay?" P. L. B., iv, T. P. to Physick Sept. 12, 1756.

from his rent. Because the holding of located and unimproved land for speculative purposes forced many people to leave the province and settle where land could be more easily purchased, and because such land had, by the act of 1724, been exempted from taxation, it was enacted that a tax of from £5 to £15 per hundred acres should be levied thereon, according to value and location.¹ Refusal or neglect to pay the amount assessed within thirty days should be punished by sale of the property. Persons who resided on lands to which they had no legal title were to give to the assessors accurate estimates of the property, and pay their taxes as freeholders. The procedure in collecting the tax was the same as that outlined in the earlier laws, with the exception that the collectors should make their payments to the county treasurers,² and they in turn to the provincial treasurer. Shortly after, as we have seen in the preceding chapter, a bill was passed to issue £4,000 in bills of credit to be redeemed from the yearly payments made by the receiver general. Then, as the demands of the assembly grew more importunate, the proprietors ordered the receiver general, if he found it necessary, to sell some land, and to insist upon the prompt payment of arrears.³ Later, he was directed to borrow the money rather than to sell any of the proprietary domain.⁴

Morris finally grew tired of his controversy with the assembly, and early in 1756 resigned. The proprietors then sought for a military man who would be ready with his pen,⁵

¹ The proprietors thought it fair that the tenants of leased lands should pay a tax proportionable to that levied on fee simple estates, but, on the ground that vacant land was not taxed in England, they did not believe it should be assessed in Pennsylvania. *Ibid.*, T. P. to Morris, Oct. 4 and 26, 1755.

² Since 1696 these had been appointed by the assessors. *Charter and Laws of Pa.*, pp. 257-8.

³ Penn MSS., *Supp. Proc.*, T. P. to Peters, Oct. 4, 1755; *Corresp. of the Penn Family*, R. Hockley to the proprietors, Sept. 19, 1756.

⁴ Penn MSS., T. P. to Peters, May 19, 1757.

⁵ *Ibid.*, *Supp. Proc.*, T. P. to Peters, Oct. 25, 1755.

and chose Capt. William Denny. They directed him to make the English laws of taxation the basis of any bill for that purpose which might be submitted to him. The tax must be levied for no longer period than a year, and with regard to real estate must be laid upon specified houses or lands in the respective counties or districts. It should, moreover, be levied upon the true rental value only, and not upon the real value of the fee simple. The tax on personalty should be laid upon the annual interest or profit, and not on the whole capital, while the complete method of assessing, collecting, and paying the tax must be particularly prescribed in the body of the bill, and not by reference to any other enactment. The true rent or yearly value of every estate in land or bonds should be ascertained by having the names of a sufficient number of the wealthiest inhabitants in every township inserted in the bill as commissioners, sworn or affirmed to do justice. In order that the character of the rents paid and their estimate might be properly ascertained, they should be ordered to compel all tenants to make a sworn statement before them. All unoccupied and unimproved lands, and all quit-rents, should be exempted. No land should be sold for the payment of taxes. No bill should establish a higher rate than one shilling to four shillings per pound. Lastly, the tenants of real estate should pay the tax, and deduct it out of the rent yearly payable to the landlord, provided such yearly rent amounted to at least twenty shillings.¹ The proprietors stated that they were not on the footing of purchasers, for they believed their grant was paramount to the laws and constitution of the province. But they repeated their assertion of willingness to bear a just proportion of any tax which was necessary for the defence of the province. It must, however, be levied equally upon the lands of the inhabitants, and upon the proprietary manors or lands actually leased, either for lives or years, provided that the method as outlined in the in-

¹ Penn MSS., P. L. B., iv, T. P. to Peters, May 8 and July 12, 1756.

structions to the governor was carefully followed, and the tax paid by the tenant, and deducted from the sums due to the proprietors.¹

When, in 1756, a bill for the grant of £100,000 to the king's use was laid before Denny, he suggested that a clause be inserted to defer taxation of the proprietary estates during that particular year, but that, when the method was fully adjusted,² the proprietors should pay their quota of the present year's tax. By this plan the rights of neither party would be violated, and the proprietors would merely incur a debt for the tax, without impeding the public service.³ When the instructions from the proprietors were, at its request, laid before the assembly, its wrath was kindled, and it demanded, in the name of the king and the suffering people it represented, that the governor immediately give his consent to its measure, as he would answer to the crown for the ill consequences of his refusal. A subsequent bill for the levy of £100,000 and exempting the proprietary estates Denny thought it advisable to pass, though it was not free from all the faults adverted to.⁴

¹ "What estates we have in the nature of other people's estates we do not desire to exempt from taxes, nor do we wish to lay a burden on any man that we would not bear our share of. If the people would do us justice in the constant payment of our quit-rents, we would on our part assist them on any great occasion when they want to defend the country, and lay a land tax for that purpose. The assembly should have made an application to us or employed persons to negotiate the affair. They should not have meddled with our estate without our consent. * * * We desire you will not continue to defend total exemption, for we wish to assist the public in proportion to our income." *Ibid.*, T. P. to Peters, July 12, 1756. "Every man must see the injustice of charging us with refusing to assist in the defence of our country before we were asked to do it." *Ibid.*, T. P. to Hamilton, Sept. 7, 1756. See also *Votes*, v, p. 21.

² In January, 1756, Thomas Penn had suggested to Gov. Morris that the proprietary estates be assessed, not by the elected assessors, but by commissioners chosen by the governor and assembly jointly and named in the act. P. L. B., iv.

³ Penn MSS., *Offic. Corresp.*, viii, Denny and Peters to T. P., Nov. 4, 1756.

⁴ *Ibid.*, *Supp. Proc.*, Denny to T. P., April 8, 1757; *Votes*, iv, pp. 680, 703; Hall and Sellers, *Laws of Pa.*

Again, in April, 1758, the demand from England for men and supplies induced the assembly to offer Denny another bill for the levy of £100,000. He had been ordered by the proprietors to assent to an act of this character, provided it were similar to the one passed two years before.¹ Hence he immediately struck out such parts as related to taxing proprietary property in the same method as the rest, or in any way except as levied on surveyed and appropriated land. After several sharp messages and answers, on April 22, the bill was passed in conformity with the governor's wishes, and with an exemption of the proprietary estates. In many respects the act was quite similar to its predecessors, especially with regard to the taxation of located, unimproved property; but the growth of the province caused a few changes to be introduced in the methods of levying the tax.² The assembly, however, lamented the unhappy necessity which compelled it to continue an exemption of the proprietary estates from their just proportion of taxes, and resolved to send the bill to Benjamin Franklin, who was then in England, so that he might lay it before the king and parliament.³

The threatening attitude of the assembly caused the proprietors to request the opinion of the attorney general and solicitor

¹ "We do not agree to this exception of our estates as in the previous bill with any desire to make an undue advantage of it, or to contribute less to the necessary defense of our country in time of war, in proportion to our incomes, than other people in it. If it shall appear, after we shall have agreed to a just method of taxation, and the other points in difference with the house, on an examination of this affair, that what we have contributed is not as much in proportion to our income as what has been given by the people in general is to theirs, we shall very willingly make up the deficiency." P. L. B., v, Proprietors to Peters, Feb. 2, 1758.

² Hall and Sellers, *Laws of Pa.*

³ *Votes*, iv, pp. 804-819. "We wish," wrote the proprietors to the council, Nov. 10, 1758 (P. L. B., vi), "that the assembly, instead of publishing volumes to traduce us, had by a representation laid before us a summary of grievances. Then, by the assistance of counsel, we might have come to some accommodation. We do not desire our estates should be defended without paying a reasonable proportion towards it."

general concerning the power of the assembly to tax their estates. They replied that the legislature had no right to levy a tax on the proprietors without their own consent, and that they were as competent judges of the mode of taxing and of the methods of ascertaining the value of their estates as the assembly was of the property of its constituents. In time of war and for the defense of the country, however, they recommended that the proprietors consent to a taxation of both their rack and quit rents, but only on the proviso that an account of the amount of the tax should be rendered them by the assembly, and the tax paid by the tenant and deducted from his annual payments. The crown lawyers also declared that the £5,000, which the proprietors had already given, should be allowed as part payment of their tax, and that no tax should be levied on unprofitable lands, on fines, or on purchase money.¹ This opinion left the proprietors in considerable doubt for a while as to what course they ought to pursue. At first they had believed that neither quit rents, nor rents reserved on leases for lives, were liable to taxation.² Many persons in England, however, thought the proprietary estates consisted of farms at rack rents, and that, therefore, the proprietors should be taxed. But they claimed that their rents on farms were in a number of cases merely a quit-rent of a few shillings, which was scarcely worth the trouble to collect. They also stated that any taxation of quit rents would tend to lessen the power of the government.³ In 1756 they had declared that the quit-rents on lands granted by patent they would never allow to be taxed, for no imposition had ever been laid on the king's quit-rents.⁴ But in cases where land was granted in fee simple for the annual payment of quit-rent only, they believed the

¹ Penn MSS., P. L. B., v, T. P. to Peters, July 5 and Dec. 8, 1758; *Supp. Proc.*, T. P. to Peters, June 7, 1759.

² *Ibid.*, P. L. B., iv, T. P. to Morris, Aug. 13, 1755; *Votes*, v, p. 21.

³ *Ibid.*, T. P. to Peters, Nov. 14, 1755.

⁴ *Ibid.*, May 8 and July 12, 1756.

tenant was the person properly chargeable with all taxes laid on the estate.¹ Still they decided to accept the opinion of the crown lawyers, and told the governor that the assessors should be entrusted with full power under the direction of the commissioners named in the bill to make inquiry into the quit-rents. He was forbidden, however, to pass any act for taxing fines, or purchase money. The proprietors believed, further, that the owners of unprofitable lands should petition against being included in any scheme of taxation. The exemption of their own estates of this description they thought was due to the fact that as grantees of the country "they were intentionally possessed of land that it was known could not be immediately settled, and therefore as not yielding any profit ought not to have any tax laid on it."²

At this point it may be well to show how uncomfortable was Gov. Denny's position. If he refused to obey the proprietary instructions, he would be liable to prosecution, while if he refused to obey the mandates of the assembly, his salary would be withheld. Proprietary governors thus had to be indigent or fond of controversy. In fact it had been a practice of the assembly to send to the governor favorite measures for his approbation, and at the same time attach to the bill a resolution appropriating his salary. When the governor refused assent his salary was of course withheld.³ He was nevertheless

¹ Penn MSS., P. L. B. iv, T. P. to Hamilton, Sept. 7, 1756.

² *Ibid.*, v, T. P. to Peters, Sept. 8 and 30, 1758; vi, Feb. 10, 1759.

³ It was said that, in his instructions from Mrs. Penn, Keith was ordered to put the proprietary family to no expense, but to take his chances with the people, and secure what he could by prudent conduct. *A Just and Plain Vindication of Sir William Keith*, etc. Prudent conduct in his case must have meant perfect accord with the desires of the assembly. For "the revenue," said Keith, "is a free gift of the people's representatives to the acting governor, which they judiciously augment, lessen or withdraw annually, according to the expense which they observe he has been at in their service, and to the ease and satisfaction they receive from the justice of his administration." *Votes*, ii, p. 418. This view of the matter is well illustrated in the following message sent to Gov. Thomas by the assembly in 1743: "We * * * assure the governor that we are of the opinion

expected to live in a manner befitting his station. If he had not an independent income he was apt to fare poorly, besides being in a measure ostracised by society. The assembly constantly feared the effects of providing a permanent salary for the governor, or, as it stated, "the conversion of the occasional presents made by the house to the proprietary deputies" into a permanent salary, for thereby it would to some extent lose its cherished control. There seems to be no question that Denny was extravagant, and lived far beyond his means. When his circumstances became straitened, he was forced to rely on occasional fees for support. At his accession to office some of the friends of the proprietors feared that he might prove false to his trust.¹ Early in 1757, however, the proprietors learned that he had made some remarks that were scarcely befitting his station as governor. It was said that he had declared that the proprietors had deceived him, for they had given him assurances that he would receive £1,500 sterling per annum,² or that they would make good what the assembly had given former governors in case his salary was withheld.³ Furthermore the governor had asserted that he would no

that government should be honorably maintained, and whenever he shall be pleased to give his assent to those bills we shall cheerfully make * * * provision for his support." *Col. Rec.*, iv, p. 628. For other instances when the governor's salary was either paid or withheld, according as he passed or refused to pass certain bills, see *Col. Rec.*, ii, p. 292; *Votes*, ii, pp. 178, 213, 463; iii, pp. 72, 343, 377, 380, 384; iv, pp. 35, 106; v, p. 425; Penn MSS., *Offic. Corresp.*, iii, Gov. Thomas to John Penn, Nov. 5, 1739, and Nov. 4, 1740; *Corresp. of the Penn Family*, R. Hockley to T. P., June 26, 1756.

¹ Penn MSS., *Corresp. of the Penn Family*, R. Hockley to the proprietors, Nov. 2, 1756.

² "I did state," wrote Thomas Penn to Mr. Peters, Nov. 8, 1757 (P. L. B., v) "that the assembly gave a present of £500 or £600, and that, with what was given by the Lower Counties and the perquisites of government, would equal £1500."

³ Thomas Penn wrote to Mr. Peters, July 31, 1754 (P. L. B., iii), "I do not approve of your suggestion to indemnify Gov. Hamilton in case the assembly should withhold his salary, for the governor is bound to carry our orders into execution without it."

longer fight the proprietors' battles. He had kept himself aloof from the council, and had failed to consult it on several important occasions. He had assigned no reasons but instructions in refusing his assent to bills. He had asserted that the proprietors were at fault in neither being on the spot, nor allowing him to relax any of his orders. He had spoken as if he affected not to know the proprietors.¹ He had talked of being appointed by the crown, and of leaving the proprietors to justify their instructions without giving himself any trouble about them. "He had behaved as if he was not in immediate dependence on the proprietors, and was not engaged to support their interests and characters in Pennsylvania." Lastly, he was accused of surliness and an overbearing demeanor, a fact that had materially increased the intensity of his conflict with the assembly.² Thereupon the proprietors requested two of their prominent adherents in the province, William Allen and James Hamilton, to keep a strict watch on the governor's movements, and report to them any culpable conduct on his part.³ They informed Denny at the same time that he had been very remiss in his correspondence, and that they hoped upon full inquiry to find that all rumors concerning his alleged misconduct were unfounded. If he felt dissatisfied with his position, they requested him to say so, in order that they might appoint his successor.⁴ The proprietors then endeavored to persuade Mr. Hamilton again to accept the governorship, but he was not inclined to enter upon another series of contentions with the assembly.⁵ As no one else seemed desirous of the position, the proprietors were forced to continue Denny in office. Possibly with the hope of guarding against any treachery⁶ on the governor's part, they ordered the secretary

¹ Penn MSS., *Corresp. of the Penn Family*, R. Hockley to T. P., July 2, 1757.

² *Votes*, iv, p. 812.

³ Proprietors to Allen and Hamilton, July 4, 1757.

⁴ *Ibid.*, to Denny.

⁵ *Ibid.*, T. P. to Peters, May 13, 1758.

⁶ "The governor's desire of buying opponents gives room to imagine somewhat more. The wanting money for secret service is of the same stamp." *Ibid.*, Nov. 14, 1757.

to supply him with reasonable sums for his support, in case the license fees were insufficient.¹ About a year later, at his request, they promised that, if his salary should ever fall below £1,500 per year, they would make up the difference to him.²

On the other hand, Denny was beset by frequent requests from Stanwix, Amherst, and others to waive his instructions. Positive commands indeed were sent him by these generals to disregard his orders from the proprietors, if they interfered with the grant of supplies for the king's service. He was assured that his conduct would be represented to the ministry as justifiable, and that it would afford him all necessary protection.³ The governor stated his quandary to the council. If he departed from his instructions he would incur the displeasure of the proprietors, as well as prosecution on his bond to observe them. If he adhered to them, no supplies would be raised and no troops could be maintained, though the public need for them was great. In March, 1759, the assembly resolved to levy a tax of £100,000 on all estates. Denny, relying upon the advice of the council, replied that, if the £5,000 which they had given fell short of their due proportion, he knew the proprietors would make it up by consenting to a fair and equal taxation of the quit-rents and appropriated lands.⁴ Then the assembly began the pre-

¹ *Ibid.*, Aug. 13, 1757.

² Penn MSS., *Supp. Proc.*, T. P. to Peters, Sept. 8, 1758; P. L. B., vi, T. P. to Denny, Jan. 12, 1759.

³ *Ibid.*, *Offic. Corresp.*, viii, Denny to Holderness, July 12, 1757, ix, Stanwix to Denny, April 24 and June 15, 1759; Amherst to Denny, May 17, 1759; R. Hockley to T. P., April 2, and Denny to T. P., May 30 and June 21, 1759; *Col. Rec.*, vii, p. 454; viii, p. 331. Stanwix, after the objectionable bill had passed, rather hypocritically denounced it as unjust, and offered to use his influence against its confirmation by the Privy Council. *Col. Rec.*, viii, p. 356.

⁴ "In answer to Mr. Franklin's query whether we proposed to contribute in proportion only of the sums already given, or to those still necessary for the defense of the country, no doubt we mean to do both, providing a fair tax is laid, and the money disposed of by order of the governor or of the crown." P. L. B., vi, T. P. to Peters, Dec. 8. 1758.

paration of a bill providing for the full proportionable taxation of the proprietors, an allowance being made for the gift of £5,000. If it should be found that that exceeded the amount they would be required to pay under a proportionable levy, the excess should be repaid to them; but if it fell short, the deficiency should be made good by taxation. Denny refused to approve of this unless commissioners were named in the bill. A number of messages then passed between the assembly and the governor, in which each party accused the other of lack of a generous public spirit. But finally he laid the bill before the council. In spite of vigorous objections from that body, he passed the measure, April 17, 1759.¹ Among the provisions of the bill were these: In addition to their other duties the township assessors should draw up a detailed statement of all located lands belonging to the proprietors, of which the unimproved portions should be assessed according to value and situation. A proportional part of the £255,000 already assessed should be levied on their real and personal estates, "due regard being paid to their situation, kind, and quality." But no assessment should be made on the proprietary estates before the total of the several assessments reached £5,000. In order to ascertain the time when these assessments would amount to £5,000, and when the remainder of the proportion of the proprietary taxes should be collected, it was provided that the county commissioners should return copies of the assessments to the provincial treasurer, who should make an account between the proprietors and the public.² As soon as the amount of the assessments exceeded £5,000, he should demand payment

¹"The Governor by Mr. Secretary sent down the Supply Bill with a verbal message that his Honor will pass the same. * * * The House then taking into Consideration the Governor's Support * * * resolved that the Sum of £1,000 be allowed and given to the Honorable William Denny, Esq., Lieutenant-Governor of this Province, for his Support for the current Year." *Votes*, v, p. 47.

²In letters to Mr. Peters, July 5 and Dec. 8, 1758, and April 12, 1759 (Penn MSS., *Supp. Proc.*), the proprietors stated that the amount they had already given should be deducted from the general account of their tax.

from the receiver general. In case that officer refused to pay within thirty days, the treasurer should inform the county commissioners of the fact. They were then to proceed by distress and sale of the located unimproved land, until satisfaction was obtained.

In his own defense the governor declared, that he felt himself obliged to forward the service, and charged the council with having too much regard for the proprietors and too little loyalty to the king. It answered that his action was based, not so much on an overweening zeal for the public service, as on "other causes which were well known."¹ There appears to be no doubt that Denny was bribed.² Several conferences were held by him with the speaker and various members of the assembly. At one of them a private agreement was reached, according to which not only this, but a number of acts seriously detrimental to the proprietors, were carried through. Of course the house aimed in this crisis to prevent the proprietors from making a strong opposition in England; hence its movements were quite moderate till it was assured of the bills being confirmed by the crown. Denny also was confident that his position was secure. He had for the time won the favor of the generals, and was the recipient of bounty from the assembly. He reminded it that he was under a bond of £5,000 to obey his instructions from the proprietors. Thereupon it resolved that, as he had passed laws granting aid to the king for the general defense of the colonies, and other laws very beneficial to the people of the province, and had done this against the advice of a majority of the council and the orders of the proprietors, and as all bonds and instructions which tended to abridge the exercise of the governor's discretion were contrary to the express terms of the royal charter, it

¹ *Col. Rec.*, viii, p. 357.

² Penn MSS., *Offic. Corresp.*, ix, R. Hockley to T. P., April 2, 1759; Franklin, *Works*, vii, p. 205; Speech of Joseph Galloway, 1764; "To the Freeholders and Electors of the Province of Pennsylvania," 1765.

would indemnify him, if the proprietors brought suit for the bond. Its purpose was that the validity of such instructions might be legally tested. Orders to that end were then transmitted to the agents in London.¹ At first the proprietors had intended to sue Denny on his bond. As soon, however, as he gave up his position in the province,² he was appointed to a high rank in the British army. This fact, together with the hostile attitude of the assembly and the subsequent agreement with its agents, caused the Penns to abandon the project.³

The proprietors believed that the assessors, if given unlimited power, would act with partiality, and were determined to contest the act.⁴ They instructed the secretary to tell the assessors that, in the present instance, the proprietors had given no orders for the imparting of information about their estates. This would cause the tax officers to make personal inquiry of each individual freeholder or tenant, a proceeding that would take considerable time and prevent anything injurious being done. But, if the assessment had already been made, the receiver general was directed to inform the county commissioners that the proprietors did not think the act binding on them, because it had been passed without their consent. They were unwilling also that their lands should be sold to pay taxes. The money supposed to be due in fines or purchase, being not so secured to them that they could call it in at any time, ought not to be regarded, they thought, as money out on mortgage. It was not reasonable to tax both the estate and what was due

¹ *Votes*, v, p. 68.

² It appears that, after Mr. Hamilton refused to accept the governorship, the proprietors conferred with a young man named Greaves, but he made certain demands, to which they would not accede. When, however, Hamilton was informed of the opinion of the crown lawyers concerning the taxation of the estates, he agreed to assume once more the governorship. Penn MSS., P. L. B., vi, T. P. to Peters, April 12, 1759.

³ *Ibid.*, T. P. to Peters, Oct. 13, 1759; to Peters and Denny, Jan. 12, 1759; *Offic. Corresp.*, ix, to Wilmot, Nov. 23, 1760.

⁴ Penn MSS., T. P. to Peters, May 19, 1759, and March 8, 1760.

upon it. At any rate they believed no more than the interest on such sums should be taxed. If, however, the books and papers of other persons were examined, they were willing that theirs should be so treated.¹ But two months later they acknowledged they must submit to the tax, or have their estates sold. Thereupon they instructed the secretary to make as many objections as possible in appeals to the county commissioners. "You are no longer to say," wrote Thomas Penn, "that we will not submit, but delay by appeal and exceptions as other people do." But if the tax could not be evaded, then that officer should pay it by selling land, by borrowing, or by any other means that would secure the necessary amount.²

When the act was laid before the Board of Trade for its inspection, the proprietors managed to secure the services of the attorney general and solicitor general in their behalf.³ The crown lawyers dwelt particularly on the invasion of the rights of the crown, notably through the refusal of the assembly to allow the proprietors to share in the nomination of officers. The attorney general favored the repeal of the act as the course of action most consistent with the dignity of the crown, and at first the Board was inclined to agree with him.⁴ In its report to the Privy Council it reviewed the history of the case, showing how, an account of their gift of £5,000, the proprietors had been exempted from previous impositions. It stated the fact that, in order to quiet the prevailing discussion, the proprietors had permitted taxation of their estates, on the condition that the tax should be laid on objects properly taxable, and that equality in the amount and justice in the method of levy should be observed. It showed the impropriety of the act, in that it not only taxed the estates for the supply then voted, but added a rate for each supply since 1755.

¹ Penn MSS., P. L. B., vi, T. P. to Peters, June 28, 1759.

² *Ibid.*, Aug. 31, 1759.

³ *Ibid.*, March 8, 1760.

⁴ *Ibid.*, T. P. to Hamilton, Oct. 18, 1760.

The Board expressed the opinion that this was in conflict with the royal prerogative exercised by the proprietors, and not consistent with natural equity and the laws of England. It thought that waste, unlocated, unimproved, and unsettled demesne lands were not legitimate objects for taxation, because they yielded no annual product.¹ Such a tax, said the Board, even when levied on located, unimproved lands, was injurious to the owners, while the annual imposition varying from £5 to £15 per hundred acres, left room for partiality and injustice in assessment. The clause in the bill taxing land at large would affect only the proprietors, especially as the amount of the imposition, and the method of levying it, were left to the discretion of assessors. Again, in the ordinary course of levying a tax on individuals, the method was, before proceeding to distress, to resort to the landlord and on his default to the tenant. In the case of the proprietors, however, resort was to be had directly to the receiver-general, and if he refused or neglected to act, sale should immediately follow without regard to the rights of the tenant. This was contrary to the laws of England, which did not subject lands to sale for non-payment of taxes. The proprietors, said the Board, had no vote in the choice of assessors, indeed not even a negative on those appointed to dispose of their property, and so were not on a footing of equality with the commonest freeholder. If they appealed from the partiality of the assessors, it must be to commissioners over whom also they had no control. The assembly, independent of the governor, had assumed the management and revision of the assessment, though this was properly an executive function. The language of the statute by which it was exercised was ambiguous, while there was no body but the assembly that passed the act, which had the power to interpret it. The popular body, moreover, assumed the right to superintend the expenditure of the money, which again was properly an executive power. It pretended to give

¹ Chalmers, *Opinions of Eminent Lawyers*, i, p. 265.

the governor a share in directing such expenditures, but this was practically nullified by a clause providing that a majority of the seven commissioners, independently of the executive, could draw upon the loan office to fulfill the purposes of this and of other enactments. In addition, it had reserved to itself the sole right to nominate officers created by the act. Even though this power was constantly exercised by the assembly, it was none the less an encroachment on the executive authority. The fact, also, that the proprietors were to receive their rents in currency, whatever might be the terms of their contracts, the Board thought was very unjust. The assembly through its counsel had urged that the money already issued would lose its credit if the act were annulled, and many innocent persons would suffer. The opinion of the Board on this point was that less injury would be done by the repeal of the act than by any other course, and that thereby a valuable precedent would be established. Were the act confirmed, a serious injustice would be done the proprietors, while the constitution would be violated and encroachments made on the prerogative. Therefore, after summing up the various arguments against the act to which reference has already been made, the Board at first recommended repeal. But on further consideration, and through the influence of Lord Mansfield,¹ it concluded to effect a compromise. Therefore the agents of the assembly, Benjamin Franklin and Robert Charles, agreed that, if the act in question were not annulled, they would undertake that the assembly should offer to the governor a bill which would contain six of the amendments alluded to in the report of the Board.²

These were as follows :

¹ Penn MSS., P. L. B., vi, T. P. to Hamilton, Oct. 18, 1760.

² "The agents assented to the engagement as the only mode of saving the act, which was of the utmost importance to the public service at that time, and they were never censured for the part they took, although the assembly refused to ratify what they did." Franklin, *Works*, vii, p. 251, *Note*.

1. "That the real estates to be taxed be defined with precision, so as not to include the unsurveyed waste land belonging to the proprietaries.

2. That the located uncultivated lands belonging to the proprietaries shall not be assessed higher than the lowest rate at which any located uncultivated lands belonging to the inhabitants shall be assessed.

3. That all lands not granted by the proprietaries within boroughs and towns, be deemed located uncultivated lands and rated accordingly, and not as lots.

4. That the governor's consent and approbation be made necessary to every issue and application of the money to be raised by virtue of such act.

5. That provincial commissioners be named to hear and determine appeals brought on the part of the inhabitants, as well as of the proprietaries.

6. That the payments by the tenants to the proprietaries of their rents shall be according to the terms of their respective grants, as if such act had never been passed."¹ A careful inspection of these amendments will show that they were conditions upon most of which the proprietors had long insisted.²

In spite of the fears of the proprietors the tax appears, with one exception, to have been fairly levied.³ That exception was in Cumberland county. It seems that, in the lists of taxable property delivered by the township assessors to the county commissioners and assessors, a quit-rent of $\frac{1}{2}$ d. ster-

¹ *Col. Rec.*, viii, pp. 531 *et seq.* Confirmed by an order in council, dated Sept. 2, 1760, p. 557.

² Contrary to the intimation given in Franklin (*Works* i, pp. 253-4,) Thomas Penn, in a letter to Gov. Hamilton, Oct. 18, 1760 (P. L. B., vi), declared that he thought compromise was far better than repeal.

³ "Upon the whole, the tax does not seem great, and we by no means think it hard that we should supply such a one for the public service." *Ibid.*, T. P. to Peters, March 8 and May 10, 1760.

ling per acre had been placed upon all the land reported by the assessors as belonging to the inhabitants, *i. e.*, 171,315 acres. The sum total of the quit-rent upon this, not for the current year but for the past five years, was charged with a tax of 6 sh. per £. Out of the whole tract, 34,943 acres were set down as patented, while the remainder was held without patent. The value of the unpatented land was estimated at £15, 10 sh. per hundred acres. But 5,000 acres near Carlisle were mentioned as appropriated proprietary land, 3,000 acres of which were rated at £100 per hundred acres, and the remaining 2,000 acres at £25 per hundred acres. Then in the town of Carlisle itself 64 lots were set down as belonging to the proprietors, and were variously rated at from £8 to £15 each. A tract in a neighboring township was estimated at £75 per hundred acres, and annual interest was charged on the tax of 6 sh. per hundred acres, which was declared to have been payable on this since 1755. Hence in this county alone the proprietary tax amounted to £787, 10 sh. The secretary and the receiver general remonstrated with the commissioners and assessors, because of their unfair proceedings in reference to this land. They said that land which had not been confirmed to the grantees by patent was held by squatters, or simply by warrant and survey. As the squatters had no claim to the land, unless according to the law of the province they had held quiet possession of it for seven years, they paid little or no rent, and it would be unjust to tax the proprietors for quit-rents or purchase money due to them from such tenants as these. On lands that had been surveyed by warrant, it was evident, from the nature of the contract and the terms of the warrant, that no legal estate vested in the grantee until a confirmation was made by a return accepted at the secretary's office, and the issue of a patent in consequence. Till this was done, the agreement was simply executory. The quit-rent and purchase money due on such land were only nominal, and, as previously remarked, the payment of them depended on the free-will and

choice of the tenant. To tax an interest or estate so uncertain as this was pronounced inequitable. And it was further argued that, even if the purchase money due on such lands could be considered as a debt to the proprietors, which they might at any time sue for and recover, it would not be liable to taxation, because the tenants from whom such was due were themselves taxed for the land. By such a plan a tax would be paid first on the land, and, secondly, on the money paid for it, or for its use. Again, there could be no justice in taxing the proprietors for land that was held by squatters, and in seeking to do this the assessors had acted contrary to the law of 1755, which provided that all occupiers of land without title should pay the tax. But, in spite of this appeal from the agents of the land office, the amount of the tax levied upon the proprietors in the county was lessened by only a little more than one-fourth.¹ Still, in March, 1761, shortly after the method of assessing the tax in Cumberland county had been thus exposed,² a committee appointed by the assembly to inquire into the state of proprietary taxation reported that no part of the unsurveyed waste lands belonging to the proprietors had been included in the estates taxed, and that in several counties only a part of the located but uncultivated lands of the proprietors had been assessed, and even then at rates no higher than those at which the land of other parties was taxed. It was also reported that in towns and boroughs, except in a few cases, land which had not been granted by the proprietors was exempted, and, when taxed, it was at rates as low as those levied on any of the land which had been granted in the town. It was also claimed that, estimating the tax rate at 18 d. to the £, the sum total levied on the proprietary lands in the year was only £566,

¹ Penn MSS., *Pa. Land Grants*, Proprietary Taxes in Cumberland county.

² The commissioners and assessors of Cumberland county sent to the assembly an address, vindicating themselves to the satisfaction of that body against the charge of unfairness in assessment. The address, however, is not published in the minutes. *Votes*, v, p. 119.

4 sh., 10 d.,¹ while the sums collected from the inhabitants would be £27,103, 12 sh., 8 d. The conclusion arrived at by the committee was that no injustice had been done the proprietors, and, if anything, their lands had been taxed lower than those of the colonists.²

In ignorance of the decision of the Board of Trade, and urged by letters from Pitt and Amherst, the assembly resolved to raise by a land tax of 18 d. per £, the sum of £100,000 with which to furnish 2,700 men for the war. Gov. Hamilton in his reply criticised the ambiguity of the bill, its partisan commissioners, its arbitrary disposition of the money, the suppression of the declaration of the secretary and the receiver-general concerning the injustice in Cumberland county, which might readily be repeated if he passed the bill in the form in which it was presented to him. After some controversy, however, on April 12, 1760, he consented to do it on account of the imperative need of aid for the frontiers, and of money to pay the troops.³ The proprietors were advised not to endeavor to have the bill repealed, for the assembly might then attempt to pass a worse measure than its predecessor had been.⁴ But they were not in need of such advice, for they stated that they would make no complaint of the amount of their tax, and were very willing to pay it, though in order to secure fairness they desired that a more definite rule in making assessments should be established.⁵ In September, 1760, however, they directed

¹ Taxation of the proprietary estates at 6 d., 12 d., and 18 d. per £ from 1760 to 1769:

1760—£2173	18 sh. 3¼ d.	1765—£692	10 sh. 3 d.
1761—£ 563	5 sh. 9½ d.	1766—£736	8 sh. 0 d.
1762—£ 552	6 sh. 7½ d.	1767—£873	14 sh. 10¾ d.
1763—£ 580	15 sh. 11½ d.	1768—£920	4 sh. 8 d.
1764—£ 593	11 sh. 5 d.		

Votes, vi, p. 174.

² *Ibid.*, v, p. 156.

³ *Ibid.*, pp. 111–114; Hall and Sellers, *Laws of Pa.*

⁴ Penn MSS., *Private Corresp.*, v, W. Allen to T. P., March 25, 1761.

⁵ "I desire nothing more than to have such parts of the estates of my family

Gov. Hamilton to pass any act for the taxation of their estates which should be in accordance with the amendments made by the Board of Trade¹ to the supply bill of April, 1759. But as soon as the report of the Board arrived in Pennsylvania, the assembly declared it never had any intention to tax the unlocated lands of the proprietors, or to violate the contracts made with them for the payment of their quit-rents. It asserted also that, as the act would soon expire, the Penns would not suffer injury.² The insincerity of these statements is well illustrated by the character of two other bills offered later for a levy of £30,000 and £70,000. In these practically all the faults condemned by the Board of Trade appear, while it was also provided that the proprietors should receive their rents wholly in paper money. The assembly, obstinately bent upon the accomplishment of its purposes, refused to reconsider the bills, or to prepare new ones.³ Gov. Hamilton, who had already expressed a wish to retire, now resigned his office, and in 1763 John Penn was appointed as his successor.

As the assembly had done nothing to alter or amend the act of 1759, Gov. Penn was ordered by the proprietors to persuade it to do so and thus to fulfill the agreement of the agents. To this the assembly again refused to consent, on the ground that the proprietors had received no injury. On January 21, 1764, however, it admitted that, by an examination of the report of a committee appointed to consider the returns of the assessors for the various counties, the existing method of assessing property was irregular and operated unfairly. Therefore, provisions intended to secure greater precision and fairness were inserted in a bill for the raising and

taxed on the same calculation with the estates of the people. It would be knight errantry to desire a more exact calculation in order to pay more in proportion, and to pay less would be extremely scandalous." Penn MSS., P. L. B., vi and vii, T. P. to Hamilton, June 6, 1760, and Aug. 7, 1761.

¹ *Ibid.*, Sept. 5, 1760.

² *Votes*, v, p. 158.

³ *Ibid.*, pp. 173, 212.

appropriation of £55,000 for the king's use. The governor objected to the measure on the ground that it contained provisions inconsistent with the amendments to the bill of 1759. Two instances of this he cited, viz.: that it taxed located uncultivated lands and lots in cities and boroughs, and that it gave to the assembly exclusive control of the money raised. The governor and the assembly also differed as to the meaning of the words used by the Board of Trade in its agreement with the agents. The assembly desired to know whether he interpreted the stipulations respecting located uncultivated lands to mean that the best and most valuable tracts belonging to the proprietors should be taxed no higher than the poorest and least valuable of the lands owned by the people. He replied that the incorporation of the precise language of the agreement in the bill would be the best and most definite means of conforming to the wishes of the Board of Trade. The assembly in response claimed that the amendments made by the Board were merely heads of provisions which had already been substantially incorporated in the bill, and that what the Board meant was, that the located uncultivated lands of the proprietors should be taxed no higher than the lowest rate at which any located uncultivated lands *under the same circumstances of situation, kind, and quality* belonging to the inhabitants, should be assessed.¹ But, after several messages protesting against the governor's construction of the amendments, it resolved that the necessity for raising money for defense was so great that it would again in this instance waive its important rights relating to money bills and agree to such an alteration of the act as the governor proposed. At the same time it remonstrated against the violence thereby done to the constitution, and declared that the act ought never to be used as a precedent.² In the bill the method of assessment was definitely established. The waste and unlocated lands of the proprietors were exempted from taxation, while their located and

¹ *Votes*, v, pp. 328-333.

² *Ibid.*, p. 350.

uncultivated lands were not to be assessed higher than the lowest rate at which any located uncultivated lands belonging to the inhabitants should be taxed. Moreover, all their lands situated within boroughs and towns should be regarded not as lots, but as located uncultivated lands, and should be taxed accordingly. Frontier inhabitants, by reason of their recent losses in war, were to be exempted from taxation for two years. Lastly, provincial commissioners of appeal were appointed from among the county commissioners.¹

As far as the actual work of assessment was concerned, the act was not to go into operation till 1770. Hence no injustice had been done when the assembly in the height of its wrath against the proprietors received from the governor, January 30, 1765, the following communication, based on a letter he had already received from his principals:² "The proprietaries have

¹Miller, *Laws of Pa.*

²"Finding that practically the only point of difference between you and the assembly is concerning the taxing of located uncultivated lands, and because we desire to put an end to all disputes, inasmuch as on consideration of the words of the order of council, they would appear to bear the construction the assembly puts upon them, we consent, as it is a matter that regards our own property only, that you shall give your assent to a bill for laying a tax on our located uncultivated lands at the lowest rates any located uncultivated lands belonging to the inhabitants, under the *same circumstances of situation, kind and quality are taxed at*. We desire, however, that the assembly comply with the rest of the agreement. We give way with regard to our own tax, not through fear of the application of the assembly to the crown, but because there does appear an equity in it." P. L. B., viii, Proprietors to John Penn, June 1 and 8, 1764.

"As to our departing from what you call the stipulation," wrote Thomas Penn to Dr. William Smith, Oct. 12, 1764, "we had determined to do it before we met Mr. Franklin on the affair, and although it might be and was intended at the time to be as you think, yet at this distance of time no person here looks upon it in any other light than that the assembly contended for."

Again, the following day, the same proprietor wrote to the governor, "We believe the tax act to be unjust, but as ours and the people's estates are on the same footing, and as the people do not complain, we certainly shall not. For any complaints we might make against it, while the people who are as much aggrieved remain silent, would meet but a very unfavorable reception. If the people petition the crown after having petitioned the assembly against it, we shall join with them."

signified to me that they do not wish or desire that their located uncultivated lands in this province should be taxed in any other manner than at the lowest rate at which any such lands belonging to the inhabitants, under *the same circumstances of situation, kind and quality*, should be assessed. I took care to make known the proprietaries' sentiments on this subject to the provincial commissioners of appeal in the several counties, desiring them to publish the same to their respective commissioners and assessors. This matter having been laid before the commissioners and assessors for the county of Philadelphia, they have informed me that, on considering the late act for granting £55,000 to the king's use, they cannot, from the express tenor thereof, and the qualifications they have taken, tax the located uncultivated lands of the proprietaries in the above mode, and that a new law is necessary to enable them so to do. As therefore they cannot put the construction on the words of the royal order inserted in the said act, which the late assembly contended for, and which the proprietaries are willing to submit to, I recommend it to your consideration, whether it is not expedient to frame a supplement to the said act to amend it in this particular."¹ "To prevent any objections that possibly might arise in assessing that part of the proprietary estate under the act of assembly granting £55,000 to the king's use, and anything in a judgment or decree of his majesty in council notwithstanding," supplementary acts for that purpose were passed in September, 1766, and January, 1774.²

The last utterance of the proprietors on the subject of taxation is to be found in a letter dated December 7, 1768,³ and addressed to Mr. Hockley, the receiver general and later the auditor general. "We are sorry," wrote Thomas Penn, "that Mr. Allen makes such speeches about our taxes, as it

¹ *Votes*, v. p. 402. *Col. Rec.*, ix, p. 237.

² Miller, *Laws of Pa.*

³ P. L. B., ix.

cannot answer any good purpose." The proprietors were thus forced to yield to the demands of a people conscious of their own strength. Their policy ceased to be public and governmental, and became dominated more and more by considerations of private interest.

CHAPTER XI

PROPRIETARY INSTRUCTIONS, AND THE POWERS OF THE DEPUTY GOVERNOR

IN the preceding chapters the history of several of the more important conflicts which occurred in Pennsylvania has been reviewed. Their origin may often be traced directly or indirectly to the instructions issued by the proprietors,¹ and to differences of opinion concerning the degree and scope of authority possessed by the deputy governors. Proprietary instructions, like royal instructions, had reference to two classes of acts, administrative and legislative. In other words, they had to do in the former case with the ordinary daily work of appointing officers, executing the laws of the province, and realizing the policy of the crown and of the proprietor in reference to it; in the latter, with the prevention of what was deemed unwholesome legislation. Administrative instructions were the customary expression of the ordinance power of the proprietor, the power which he possessed as chief executive of the province. When he was personally residing in the province, he acted as its governor, and with the advice of the council issued these ordinances directly. When he was absent, they had to be issued to and through the lieutenant governor. The relation borne by the lieutenant to the proprietor was that of agent to a principal. By his commission he was bound to obey the expressed will of his superior. After 1708 he was

¹ "As far as instructions are concerned, we have no desire to claim any powers to which we have no legal right, nor to do any act that shall give up the powers intrusted in our hands for the government and protection of the people." Penn MSS., P. L. B., v, T. P. to Chew, Dec. 12, 1757; iv, to Peters, May 8, 1756.

under a bond to render this obedience.¹ It was only through the maintenance of such a relation that the absent proprietor could exercise the powers and enjoy the rights conferred upon him by the royal charter. In the domain of administration this fact was rarely if ever disputed. Upon a fair construction it would seem that the instructions possessed full validity, save where they were inconsistent with the laws of England; with orders or instructions affecting Pennsylvania which had been issued by the crown through its minister, or through any one of its administrative boards; with acts of the provincial legislature, which had not been rejected by the crown or the proprietor during the time legally allowed therefor; and with sound reason, as interpreted by the proper judicial authority in England. But when it came to the use of instructions to influence legislation, and in close connection therewith the exercise of the right of dissent by the proprietor, higher interests were touched, and controversy arose. Now the fact that under the royal charter all enactments of the Pennsylvania legislature must be laid before the king in council for his examination and possible disapproval, did not theoretically exclude the proprietor from the right of expressing his assent² or dissent.³ He possessed that right as truly as did the proprietor of Maryland, who was not compelled to lay the laws of his prov-

¹ Charles Gookin, who was governor from 1709 to 1716, was under a bond of £2,000 or more to observe the instructions (*Penn and Logan Corresp.*, ii, p. 323); while that of Sir William Keith, who succeeded him as governor, 1716-1726, was £1000. *Votes* ii, p. 421. When proprietary interests became more complex, however, it was advanced to £5,000. At the same time, the crown required from the governor a bond of £1,000, as a pledge that he would obey and enforce the laws of trade.

² "No bill can pass without our consent," wrote Thomas Penn to Mr. Peters, Sept. 28, 1751 (*P. L. B.*, iii).

³ In reference to the whole question of assent and dissent, the rule of law seems to have been that neither the express assent of the proprietor, nor even that of the crown, was necessary to give validity to an act of assembly, of which a deputy governor had approved. Chalmers, *Opinions of Eminent Lawyers*, i, pp. 306-7.

ince before the king.¹ But practically it reduced the effect of his action to a nullity. If the crown disapproved of an act, that was the end of it; the expression of assent by the proprietor would then avail nothing, while the expression of dissent by him would be only an echo of what the crown had declared. On the other hand, if the crown failed to express its disapproval within six months after the act was presented, it would remain in full force. This could not be changed by the dissent of the proprietor, while his assent would add nothing to the validity of the law.

By the terms of the royal charter we have seen that the proprietor possessed legislative power. Its language was: "We do grant free, full and absolute power to him, and to his heirs, and to his, and their deputies and lieutenants, to ordain, make, and enact, and make his and their seals, to publish any laws whatsoever," etc. But this grant was limited by the further clause, "by and with the advice, assent, and approbation of the freemen of the country, or the greater part of them, or of their delegates." This excluded legislation directly by the proprietor, and left him the power to recommend through the deputy governor the passage of certain measures; to forbid him to give his assent to others; to express the proprietary dissent, however slight its weight might be, in case where a governor had approved of an obnoxious measure. In the first two cases the function could be exercised only through instructions to the deputy governor. The relation between the proprietor as principal, and the deputy as agent, would thus be employed for the purpose of preventing or encouraging legislation. The opinions of the assembly on this head are admirably set forth in the pamphlet written by David Lloyd, and entitled, "A Vindication of the Legislative Power." At the outset it may

¹ "The governor of Maryland gives no bond except to observe the laws of trade, because Baltimore repeals all laws made in Maryland that he does not approve. If the assembly will allow us that power, we shall not desire to have any bonds given us." P. L. B., v, T. P. to Peters, July 9, 1757.

be said that the assembly believed that, when the deputy governor had received his commission from the proprietors, he was endowed with all the governmental powers of the proprietors. In other words, when the proprietors had given the governor his commission, their power rested in him and was to be exercised entirely at his discretion. Hence, whenever the right of the proprietors to issue instructions binding on the governor was contested, that officer was considered accountable to no authority but the crown. This explains why any opposition to this opinion on the part of the proprietors was met with threats of appeal to the king. Lloyd argued that a deputy has full power to do anything his principal may do ; for a man could not be a deputy to do a single act, nor could a deputy, properly speaking, have any less power than his principal. Therefore, if the principal should force him to agree not to do anything which he himself might do, such an agreement would be void.¹ He then proceeded to declare that the power of legislation, which was granted by charter to William Penn, his heirs, deputies, and lieutenants, by and with the assent of the freemen, was originally vested in every freeman, a right which needed no grant or charter from the proprietor to confirm. By the frame of government of 1701, he thought, it was plain that the entire legislative power was lodged in the governor and the representatives of the people. The governor might have a council to advise and assist him in legislation, but no more. It was impossible, then, he argued, for the proprietor by instruction or any other act, except the appointment of a successor or personal assumption of the governorship, to divest the governor of his right to govern in all cases. Again, if the governor gave any bond or entered into

¹ In support of this argument he cited several cases, notably a decision in the court of King's Bench, 13 William III. (*Parker vs. Kett*, i, Salkeld, p. 95), which declared that deputy sheriffs were by law liable to execute all process, else justice would be denied. The analogy between a sheriff and the proprietor of a province is absurd on the face of it, and needs no refutation.

any contract to observe instructions that abridged or restrained the authority granted by his commission to exercise the powers of government, such a bond or contract would be absolutely void. He asserted that it would be an absurdity to allow persons represented to control the acts of their agents in those matters which the other branch of the legislature might think reasonably proposed. But, if the governor was under security to obey directions given in the royal charter, the security was perfectly valid in law. Then he propounded the question, if the proprietor by his frames of government did not intend to be bound by the rules of the law, i. e., not to lay his deputy under instructions—whether he would not thereby show himself unworthy of the trust and confidence reposed in him by the king. He thought the royal charter made the people sharers with the proprietor in all rights, liberties, and privileges, but without the slightest encroachment on his authority. Lastly, he believed that the real design of the king's grant could not be achieved unless proper encouragement should be given to the people of the province—people who had never urged or willingly insisted on any diminution of rights, royalties, or powers which justly belonged to the proprietor.¹

Lloyd was probably sincere enough in his opinions, but his eyes were blinded by the usual popular prejudice. The scope of the reserved proprietary rights according to his idea was to be determined, not by the proper judicial tribunal in England, but by whatever construction seemed best to the colonial assembly. He seems to intimate that the governor was provided by the royal charter with all the powers requisite for legislation. The function of the proprietor was merely to designate the person who should exercise the powers. But if the proprietor had no control over his deputy, by what right

¹ *Votes*, ii, pp. 444–447. Similar views may be found in Sir William Keith's "Defense of the Constitution of the Province of Pennsylvania" (pp. 433–439); "Remonstrance to Mrs. Penn" (p. 441); letter from Keith to Mrs. Penn and Joshua Gee (p. 416); and "A Just and Plain Vindication of Sir William Keith."

could he remove him? That surely is the exercise of supreme control. The issue of instructions affecting legislation was a necessary feature of the proprietary system of government, and was as consistent with the spirit of the royal grant as was the issue of those in the domain of administration. If it were not so, the deputy in accepting or rejecting bills, and in his whole conduct with reference to legislation, would be acting independently of his principal, the proprietor. This would be inconsistent with the very nature of his office, and of the system within which he worked. The pertinence of Lloyd's remarks, moreover, is assuredly doubtful, when he asserts the right of the king to enforce obedience to instructions by a bond actionable at law, but denies the same right to the proprietor, who alone was entrusted with the king's prerogative, and therefore entitled to the exercise of the rights it implied within the limitations imposed by charter. Through the royal patent the grant of powers was made to the proprietor, and he alone was held responsible for what occurred in the province. How could that be possible if the control of the proprietor over the deputy did not extend to every department of the latter's activity? Indeed, there is no indication that the proprietors ever intended to leave their deputies independent of control. But, with all the attempts to safeguard their prerogatives, we have seen that they were forced to succumb to the bribery of Denny. Of what real value then were instructions, if a hostile assembly offered the governor full indemnification for their violation?

Before passing to a consideration of the instructions somewhat in detail, it may be well to cite Thomas Pownall's¹

¹ Because they had been rather skeptical as to the fitness of Americans to hold the gubernatorial office (Penn MSS., *Supp. Proc.*, T. P. to Peters, Oct. 25, 1755), the proprietors during this period were accustomed to consult men in high official stations regarding such appointments. However, in 1755, toward the close of Gov. Morris' administration, the Duke of Cumberland had recommended Pownall to Thomas Penn for governor. It was supposed that Pownall was the man best qualified to reconcile the parties then in conflict. But the news

views as expressed in his "Reasons for Declining the Government of Pennsylvania."¹ He pointed out the insecurity likely to result from bonds and high penalties to enforce instructions, because temporarily and for the immediate safety of the province the governor could not deviate from them. The case was different in the provinces directly under the king, for there any governor for the good of the service might depart from his orders, and seek pardon therefor. Hence emergencies and unforeseen accidents should be taken into consideration. Again, in the administration of government matters of dispute that might otherwise be satisfactorily settled, were often determined beforehand by the pro-

of the prospective appointment aroused great disgust among the proprietary party, as Pownall was a personal friend of both Franklin and Norris. "The appointment of Pownall," wrote Mr. Hockley to Thomas Penn, June 3 and 5, 1756 (*Penn MSS., Corresp. of the Penn Family*), "would give great disgust to all your friends here, except the Quakers, as he is a great intimate with Franklin and Norris. One member of the assembly said you did not know Mr. Pownall, otherwise, notwithstanding you had paid the Duke of Cumberland the compliment of the appointment or recommendation of a governor, when he was proposed you would have told the duke that you intended to take the government upon yourself. Pownall's appointment will not be satisfactory, because he will be apt to pry into every one's business; is a great stickler for certain families, communicates secrets readily, if to his advantage. His veracity is called in question by many, and he is artful and insinuating in working into the favor of the ministry." In fact, as soon as Richard Penn heard of it, he opposed the idea as likely to injure their private interests and cause other inconveniences. This was due to Pownall's attitude concerning the instructions. The governor's commission and instructions were submitted to his inspection. He made many objections, and flatly refused to give any security to obey them, in spite of the opinion of Lord Halifax, that they were perfectly proper (*Ibid.*, P. L. B., iv, T. P. to Peters, May 8, 1756). The fact that he was at the time counsellor to Lord Loudoun on colonial affairs, and that he expected eventually to succeed Shirley as governor of Massachusetts, added weight to his rejection of the Penns' propositions. Thereupon the Duke of Cumberland recommended Denny (*Ibid.*, April 20). The proprietors subsequently expressed satisfaction that Pownall had not been appointed, but they were somewhat nettled at his criticisms (*Ibid.*, *Private Corresp.*, iv, Richard Penn to T. P., April 8, and 10, 1756).

¹ *Pa. Mag. Hist.*, xiii, p. 441 *et seq.*

prietors. The lieutenant governor, therefore, could not take any practical measures to accommodate such disputes without danger of prosecution on his bond. In other words he had no discretion in the discharge of the duties of his office, while the proprietors, whose situation made it difficult for them to understand the true needs of the province, shaped his course of conduct regardless of circumstances. He then dwelt on the serious defects of such a method of administration. He thought the powers granted to the proprietors by the royal charter were such as might well secure the good government and defense of the province. The proprietors did in fact grant all these powers in their commission to the governor; but their exercise was abridged and in measure changed, he believed, by the mode of administration prescribed and defined in the instructions. The people necessarily were discontented under such a regime, for they thought administration by a deputy thus hampered and restricted could not satisfy their needs and those of the province. Hence they did not enjoy, said he, the full rights and privileges of their charter. Furthermore, the lieutenant governor was required to exercise his authority subject to the council. The assembly then could act only on the principle that the full powers of government must be somewhere within the province; but if they were not in the governor, it must itself assume the authority necessary for the furtherance of the welfare of the province. The presence of a governor who could not act independently occasioned, rather than removed, internal disorders. The assembly naturally would refuse to have any confidence in the deputy or the proprietors. Strict obedience to instructions, also, would destroy all impartiality, and no service could be rendered in the province, either to the proprietors or to the king. Finally, he criticised several items in the instructions, which he showed to be contrary to the practice in the royal provinces.

In his remarks throughout Pownall displayed an inclination to curry popular favor, as well as an intense dislike toward the

government of colonies by proprietors. He recognized also the innate defects of the proprietary system of instruction—defects, however, which were inherent in the system of which the instructions were only a part. But he failed to recommend any measures other than instructions by which the proprietors would be insured the preservation and continuance of their legal rights.

Passing now from the theory of proprietary instructions, let us notice their provisions and some of the results of their enforcement. In general it may be said that the assembly refrained from opposition to instructions so long as no attempt was made through them to thwart its ambitious schemes. In fact the instructions of the first proprietor were apparently more agreeable than the unrestrained will of a deputy governor.¹ But when it tried to assume complete control of the affairs of the province, the proprietors struggled to preserve their rights, and for this purpose relied on their formal instructions issued at the time the commission was granted, as well as on their private letters to the governors. These officials, because they were on the spot and were actively engaged in promoting and defending the interests of the proprietors, had considerable hardship to undergo. They became involved in long and bitter controversies with the assembly, and in some cases were driven from office by these contentions.²

The first commission granted by William Penn was dated April 10, 1681.³ In general terms Captain Markham, who received this document, was authorized to do all that might be needful for the peace and safety of the province till the proprietor came. In particular he was to call a council, receive from the inhabitants acknowledgment of Penn's authority and right to the soil, settle boundaries and determine disputes about

¹ *Col. Rec.*, i., pp. 244, 269; *Votes*, ii, pp. 200–207.

² This was true of Gookin in 1716, Thomas in 1747, Hamilton in 1754, and Morris in 1756.

³ Hazard, *Annals of Pa.*, p. 503.

land, establish courts, appoint sheriffs, justices of the peace, and other minor officers, and if necessary, to call the people together for the purpose of suppressing tumults and revolts.

Passing over the instructions issued by Penn, February 1, 1687, to the commissioners of state, we find that in 1689 he directed Gov. Blackwell that all things should be done in his name as absolute proprietor; that full validity should be attached to his appointments to office; that the laws should be collected and transmitted to England; that justice should be administered impartially, and that only proportionate fines should be allowed. He ordered Blackwell to discourage feuds, assist the commissioners of property, improve roads and highways, and promote the general prosperity of the province. The governor was also to inform the proprietor of what laws were unnecessary and defective. Lastly, there were minor directions concerning equity, suppression of vice and crime, care for the poor and unfortunate, and watchfulness over the cultivation of good morals.¹

After Blackwell had resigned in 1689, Penn ordered that the council should maintain virtue, keep the peace, collect the quit-rents, and provide a salary for the governor. "Let the laws you pass," wrote he, "hold so long only as I shall not declare my dissent, that so my share may not be excluded, or I finally concluded without my notice; in fine, let them be confirmable by me, as you will see by the commission I left when I left the province."² This last order was embodied also in the commission issued to Thomas Lloyd as governor early in 1692.³

Until 1704 Penn adhered to the practice of reserving final assent. At this time the assembly informed a committee of the council that it was dissatisfied with the clause in Gov.

¹ *Col. Rec.*, i, p. 318.

² A similar provision had been inserted in the commission to Blackwell the year previous. *Votes*, i, pt. i, p. 51; *Col. Rec.*, i, p. 316.

³ *Penn and Logan Corresp.*, ii, p. 71.

Evan's commission, whereby the proprietor had reserved to himself and heirs the right of final assent to all bills that the governor should accept. The conclusion reached by the assembly respecting this matter was that the reservation was void, because the royal charter did not admit of it. Furthermore it was argued that, by making void the clause concerning instructions, the governor's commission was nullified, because it possessed the nature of a royal writ, and to be valid must be good in all its parts. Uncertain about its accuracy in the matter, however, the assembly desired the opinion of the council whether bills passed and sealed with the great seal could be afterwards vacated by the proprietor without the consent of the assembly. In reply the council, among whose members was William Penn, Jr., stated that the saving clause was void in itself, but that did not invalidate the rest of the commission; moreover that the proprietor could not annul such bills without the consent of the assembly.¹ That body on its part sent him an angry address, recounting the trouble which a reservation of this kind might occasion. Penn found it advisable to yield, and wrote to James Logan, "I have sent the governor a commission without the frightful reservation; so that tender Briton and patriot, D. Lloyd, trusting upon the governor's honor and integrity in the use thereof, have only signed it; and do desire thee to take care that the master of the rolls seal it with the great seal of the province."²

¹ *Col. Rec.*, ii, pp. 144-7. James Logan also wrote to the proprietor that the exercise of the right of final assent might be advisable in matters concerning his territorial rights, but would be a hindrance to the granting of supplies. For, owing to the three possible negatives of governor, proprietor, and crown, the assembly could not be sure that any measure would pass. On another occasion he stated that the royal charter made all acts passed by the lieutenant governor as available in law as those passed by the proprietor. "The very words of that saving [clause]," said he, makes the clause void, there being nothing reserved but an assent to laws passed, which when passed will need none. That answer was believed by all those that signed it was truly right in itself, yet would scarce have been complied with by the council had not necessity forced them, for without it the assembly would have done nothing." *Penn and Logan Corresp.*, i, pp. 268, 286.

² *Ibid.*, ii, p. 103.

This ended the controversy respecting the power of final assent.

The instructions issued to Gov. Evans in 1704, to Gov. Gookin in 1708, and to Gov. Keith in 1716, included commands to suppress vice, to discourage faction, to seek the advice of the council in all matters of moment, and to abide by it; to refrain from interference in matters affecting the proprietor's property, to "preserve a good understanding" with neighbors and Indians, and, finally to protect the religious rights of the people.¹ The assembly requested that the instructions which the trustees and the proprietary family had sent Keith, should be laid before it. To further his personal ambition, and to gratify the assembly, he did so.² Thereupon, in 1724, he and the assembly joined in declaring that the instructions were a violation of the privileges of the representatives of the people, and that he as governor was not bound to obey them. Then he proceeded to spread them broadcast among the people.³ The displeasure of the Penns at these proceedings was so great that they removed him from office.⁴ But the house refused to protect him against the penalties for his offense, though it sent a remonstrance to the proprietary family and to the king, the tone of which, however, was too moderate to satisfy the desires of the governor.⁵

¹ Logan, "Antidote in some Remarks on a Paper of David Lloyd's called 'A Vindication,'" etc. "A Memorial from James Logan," etc.

² From this time on at the beginning of the administration of almost every governor, and, in the case of instructions occasionally during his administration, the assembly requested that the commission and instructions from the proprietors together with the commands and form of approbation of the crown should be laid before it. As a rule the commission and its approval by the crown were submitted to its inspection, but instructions, both royal and proprietary, were communicated at the discretion of the governor and then only in cases of great and immediate importance.

³ Penn MSS., *Offic. Corresp.* i, J. Logan to Mrs. Penn and John Penn, July 30, 1724, Feb. 11 and 12, 1725.

⁴ *Pa. Arch.*, 2d series, vii, p. 84.

⁵ *Votes*, ii, pp. 463, 485.

As their private relations became less involved and the members of the proprietary family began to see the necessity for a more active management of the administration, the instructions were extended in range. Gov. Gordon in 1726 was instructed to obey all directions, and to do nothing which might injure the family or its interests; to observe the laws of trade; to refrain, so far as possible, from appointing the same persons to more than one office; to pass no act for the issue of paper money without a clause suspending its execution till the king's pleasure should be known, and to transmit to England all laws within six months after their passage. Also, he was ordered to induce the assembly to appoint and pay an agent whose duty it should be to solicit action by the crown on the various laws as dispatched. Because of the clamor of the people for paper money, and of the complaint of the assembly that he was unduly restricted by his instructions, we have seen that Gordon violated the one which concerned bills of credit.¹ The Penns, however, did not feel strong enough in their control over the government to consider either his dismissal, or the instituting of a suit for the forfeiture of his bond. The natural result was that the instructions given to Gov. Thomas in 1738 should be less stringent than those of Gordon on the subject of paper money. Also he was forbidden to pass any law or to bestow any office without the approval of Thomas Penn, who at that time was in the province. These were the only important points in which the instructions of Gov. Thomas differed from those of his predecessor.²

The instructions issued to Gov. Hamilton in 1748 and to Gov. Morris in 1754 were very similar. The bond of £5,000 held them to the performance of their duty and to strict compliance with all instructions, whether they concerned the

¹ Penn MSS., *Offic. Corresp.*, ii, J. Logan and P. Gordon to the proprietors, April 30, May 2 and 16, 1729.

² *Ibid.*, P. L. B., i, John Penn to T. P., Feb. 17, 1737; to Gov. Thomas, March 29 and June 20, 1739.

territorial interests of the proprietors' government, or any other matter connected with provincial affairs. Among the numerous requirements contained in the instructions of these governors, the following may be cited as representative. The governor was to discharge his duties for the interest and advantage of the proprietors, and for the peace and prosperity of the people. For all acts of government the advice and consent of the council, or of the proprietors, if they or any of them were in the province, must be obtained. The governor was not to permit Catholics to settle or hold office in the province. The emission of paper money should be discouraged. The organization of a regular militia should be promoted, though with due attention to the conscientious principles of the Quakers. The extension and increase of settlements was to be encouraged, and the control of the proprietors over ferries maintained. Directions were given concerning the establishment of a court of chancery, but the governor was forbidden to establish one unless the assembly passed a law to regulate its procedure and the fees of its officers. The governor was forbidden to ask the advice of the assembly. He was not to consent to the levy of an impost, except in case of great necessity. Lastly, he was to insist that a salary of £1,000 per year be settled on him by the assembly.¹

When the province became involved in the French and Indian War, the assembly protested that for it to prepare bills was a loss of time, if the governor was restricted by private instructions.² The binding force of these it believed was greater than was generally known, though the proprietors, in order to avoid censure, seemed anxious to shift the responsibility for them on to the shoulders of the king. It was true that the Penns did not care to assume personal responsibility for the instructions at a time of such peril, and therefore ordered Gov. Morris to say that in amending laws he exercised his own

¹ MS., Bond, Commission and Instructions to Hamilton and Morris.

² *Votes*, iv, p. 265.

judgment.¹ Meanwhile Morris was requested that, if he were so hampered by proprietary instructions, he would lay them before the house for inspection.² He answered that he would present such of them as concerned the public service. This did not suit the purposes of the assembly, and a prolonged discussion arose between it and the governor, which served only to increase the prevailing uneasiness.³ The opinion that the governor was too much restricted by his instructions was by many held as firmly as belief in their religion, and a sentiment frequently expressed was that nothing should be done till one of the proprietors came over in person.⁴ In order to raise an outcry against the proprietors, and to draw down upon them a censure from the home government for insisting on a matter essentially private in character, the assembly declined to give money or supplies, if instructions were brought into play.⁵ The proprietors, however, informed Morris, that, if the ministers wanted supplies to be granted on terms different from the instructions, he was judiciously to waive the latter. In some surreptitious manner, Robert Charles, the provincial agent in England, secured a copy of Morris' instructions, and sent it to the assembly. The reading and publication of this raised a storm of personal abuse against the governor. Some of the assemblymen went so far as to say that they preferred to have the French conquer them rather than to surrender

¹ Penn MSS., *Supp. Proc.*, T. P. to Peters, Oct. 25, 1755.

² In 1756, during Gov. Denny's administration, the house requested a sight of his instructions from the proprietors. The purpose of this, according to its own declaration, was to prevent the offering of any bill that might conflict with them. When the governor complied with its wishes, a bill directly opposed to one of the instructions was immediately sent up to him. This deceitful conduct, however, seems to have been generally censured. *Shippen Papers*, p. 63.

³ *Votes*, iv, pp. 330-568; *Col. Rec.*, vi, p. 226 *et seq.*

⁴ Penn MSS., *Corresp. of the Penn Family*, R. Hockley to Richard Penn, Aug. 3, 1754.

⁵ Penn MSS., *Offic. Corresp.*, vi, R. Peters to T. P., Dec. 16, 1754.

their privileges to the proprietors.¹ After the house had sent an address to the king remonstrating against the instructions as interfering with his majesty's service, the Penns were summoned before the Board of Trade. In response to interrogations on this point, they denied that they had given orders that were an infringement of the charter, or of dangerous consequence to the British interests. They also declared that they would not communicate private instructions to the house, though they were willing to submit them to the examination of the king and ministers. In reply to the insinuations of the assembly, they distinctly asserted that they had not prevented the governor from affording the proper aid in procuring supplies, but on the contrary had urged that a firm pressure be laid on the house for that purpose. Lord Halifax, president of the Board, then declared his satisfaction with what the proprietors had done.²

Ere long the house took decisive action. It drew up resolutions which embraced the following: that instructions were not calculated to promote the happiness and prosperity of the province; that they were of dangerous consequence to British interests, a positive breach of the charter of privileges, and inconsistent with the legal prerogative of the crown as settled by act of parliament. It complained also that, in order to conform to proprietary instructions, it had been compelled to enact a law which reduced by one-half a grant of supplies to the crown. Such a course of proceeding was declared to be a violation of the constitution and liberties of the country.³ This indirect appeal to the interest of the crown was one of the strongest weapons which the assembly could use against the proprietors. Realizing this, it never failed to use the weapon for the ad-

¹ Penn MSS., *Corresp. of the Penn Family*, R. Hockley to T. P., Aug. 4, 1754; to the proprietors, Aug. 22, 1755; *Pa. Arch.*, 1st series, ii, pp. 253-258.

² Penn MSS., *Supp. Proc.*, T. P. to Morris, May 10, 1755.

³ *Votes*, iv, pp. 368-374, 571, 605-612. "To the Freeholders of the City and County of Philadelphia."

vancement of its own power, trusting to its remoteness from England as a shield against adverse criticism. But however reasonable the instructions may have seemed at home, at times it was almost impossible to enforce them in Pennsylvania. This was due partly to the character of the instructions, but more to the blunt statement of the assembly that, when it was allowed to inspect them, and when, if they were found to be of the same character as heretofore, the governor should be led by his judgment to conclude that such considerations as allegiance to the crown, or the immediate safety of the colony, were of sufficient importance to induce him to disobey them, notwithstanding the penal bond, it would continue to grant additional sums to the king's use.¹ Hence, early in 1757, the assembly appointed Franklin and Isaac Norris, as commissioners to go to England for the purpose of soliciting a removal of the grievances caused by instructions. As the latter declined to accept, Franklin was sent alone. In August he delivered to the proprietors, by whose influence it was laid before the attorney general and solicitor general, a paper called "Heads of Complaint." It ran as follows:

"That the reasonable and necessary power given to deputy governors of Pennsylvania by the royal charter * * * of making laws with the advice and consent of the assembly for raising money for the safety of the country and other public uses, according to their best discretion, is taken away by proprietary instructions enforced by penal bonds, and restraining the deputy from the use of his best discretion, though being on the spot he can better judge of the emergency, state and necessity of affairs than proprietaries residing at a great distance, by means of which restraints sundry sums of money granted by the assembly for the defense of the province have been rejected by the deputy, to the great injury of his majesty's service in time of war and danger of the loss of the colony.

¹ *Votes*, iv, pp. 368-374; Penn MSS., *Offic. Corresp.*, viii, Denny to Holder-nesse, July 12, 1757.

“That the indubitable right of the assembly to judge of the mode, measure and time of granting supplies is infringed by instructions that enjoin the deputy to refuse his assent to any bill for raising money, unless certain modes, measures and times, in such instructions directed, make a part of the bill, whereby the assembly in time of war are reduced to the necessity of either losing the country to the enemy or giving up the liberties of the people and receiving law from the proprietary; and if they should do the latter, in the present case, it would not prevent the former, the restricting instructions being such as that, if complied with, it is impossible to raise a sum sufficient to defend the country.

“That the proprietaries have enjoined their deputy by such instructions to refuse his assent to any law for raising money by a tax, though ever so necessary for the defense of the country, unless the greatest part of their estate is exempted from such a tax. This to the assembly and people of Pennsylvania appears both unjust and cruel.

“The proprietaries are now requested seriously to consider these complaints and redress the aggrievances complained of in the most speedy and effectual manner, that harmony may be restored between the several branches of the legislature, and the public service be hereafter readily and fully provided for.”¹

After some delay the proprietors succeeded in obtaining the opinion of the crown lawyers. It was to the effect that they were fully justified in issuing instructions, for the performance of which they might take whatever security they thought advisable. They were also assured that none of the instructions previously sent to the deputy governors had been illegal, and that their refusal to permit any examination of them was perfectly proper. At the same time the crown lawyers suggested that the instructions concerning the passage of laws should be made more general in character, but all necessary precautions should be taken to guard the prerogatives of the crown, the

¹ *Votes*, v, p. 20.

proprietary rights of government, and their own estates, in all which cases they might be "positive and particular."¹ Thereupon the proprietors sent to the assembly a formal reply to the "Heads of Complaint." They told the assembly that a paper so short and so general in its statements could not properly express the importance of the matters in dispute, and tended to impair the "necessity and usefulness of a free intercourse" so desirable between proprietors and people. They wished, "in order to that harmony which they most sincerely desired, that the house * * * had sent some address, representation, or memorial pointing out clearly and distinctly any grievances" which it desired to be redressed, and that it "had given as full powers as the nature of such a case would admit to some person of candor to enter into the detail and full discussion of those several matters which seem to be alluded to in the 'Heads of Complaint.' * * * Had these things been done, * * * many points might have been speedily adjusted to mutual satisfaction. * * * Persons not well inclined to governors or government," continued the proprietors, "may indeed desire that all matters whatsoever should be left to the discretion of a lieutenant on the spot, whom the house might supply or not just as he should yield up that discretion of his more or less to them; but as long as instructions are constantly given to every person entrusted with the government of any British colony (and bonds also required from every such person for observance of such instructions); * * * as long as * * * proprietaries are repeatedly commanded by the crown, upon the nomination of each successive lieutenant governor, to give instructions to such lieutenant; and as long as a lieutenant governor may by his misbehavior (if left entirely to his discretion) bring the proprietaries' estate and franchises into danger, so long the proprietaries must contend to give instructions to and take bonds from their lieutenant governor." The proprietors thought further that, had the sums raised by taxa-

¹ Penn MSS., *Supp. Proc.*, T. P. to Peters, July 5 and Dec. 8, 1758.

tion been properly applied, the instructions would not have proved a hindrance. The reference in the paper to the taxation of their estates they declared was unjust in its insinuation that "they would not contribute their proportion to the defense of the province." They acknowledged that they had instructed the governor "not to assent to any law by which their quit-rents should be taxed, * * * because they thought it was not proper to submit the taxing their chief rents due to them as lords of the fee to the representatives of their tenants * * * . As to the legal rights of government," said the proprietors, "or the powers and prerogatives of the crown, we must support them as a duty which we owe to the crown, to the nation in general, and to the inhabitants of the province in particular * * * . We shall always be open to representation and conviction," concluded the reply, "and we see no matters remaining but such as may, by the desirable methods of free conferences, * * * be well settled to mutual satisfaction on both sides, and to the welfare and happiness of the province which we have most affectionately at heart."¹ The assembly, however, did not authorize any persons to act as the proprietors had suggested, and, despairing of carrying its point in England, resorted to the corruption of Gov. Denny.

The manner in which the opposition of the assembly to instructions culminated will be described in chapter xiii. It only remains to be said here, that those which were issued to Gov. John Penn in 1763, 1773, and 1775,² and to Gov. Richard

¹ *Votes*, v, pp. 19-21.

² In the instructions issued to John Penn, Aug. 5, 1775, it was stated that the observance of them would enable him to discharge the trust reposed in him for his majesty's service. He was to preserve order and morality, and to further the general prosperity of the province. He was to allow toleration to all Protestants. He was not to permit Catholics to settle or hold office. He was to execute the laws of trade. He was to continue the present council, and, with the consent of two-thirds, fill all vacancies therein. He was to ask the advice of the council in all acts of government, especially with reference to calling, proroguing, or dissolving the assembly. He was to continue the present government officials in their stations so long as he might think fit, except where their appointment and term of office were

Penn in 1771, were in form even more complete than their predecessors ; but, after 1764, very little real force was attached to this essential feature of proprietary administration.

prescribed by acts of assembly. He was not to consent to any bill for the emission of paper money, unless the "whole of the interest accruing should be clearly disposed of, and not at the discretion of the assembly." He was to keep the amount of currency as low as possible. It was not to be made a legal tender in the payment of quit-rents or other sterling debts. He was to build a fort, and establish a militia. In cases of emergency he was to follow the directions laid down in the royal charter concerning the mustering of troops. The religious opinions of the Quakers should be respected, but they must furnish an equivalent for their military service. The governor, moreover, was to continue the maintenance of honorable relations with the Indians, and to keep individuals from interfering with the management of treaties. All the counties in the province should be given equal representation in the assembly, according to the "charter of privileges and solemn compact of 1701." The governor, again, was not to pass any bill which might take away or reduce the right to receive fees, fines and forfeitures due to government officials, unless the assembly offered a permanent compensation therefor. He was to make at his discretion, unless otherwise directed, all needful amendments to bills, as his predecessors had done. He was to send to England the provincial laws soon after they were passed, as well as the printed proceedings of the assembly. He was not to permit the lessening of the proprietary power of appointment, or that of establishing ferries, though the assembly might regulate the rates of the latter, in case it would declare that the right to establish them belonged as a royalty exclusively to the proprietors. He was not to pass any act for the establishment of a court of chancery, since that was a right already vested by charter in the proprietors. But the assembly might regulate the procedure of the court, which should consist of the proprietors, or governor, and members of the council, though not in cases where their interests were involved. The governor should never ask aid from the assembly and never allow that body "to do anything by law which the proprietaries might do by charter." He was not to pass any act of assembly to erect or divide counties, unless the county seat was located upon land belonging to the proprietors, nor was he to grant charters of incorporation for markets or fairs, without special order from them. He should pass no law for the levying of duties, imposts, or customs, unless such a course of action was absolutely necessary. Finally, he was ordered to support the rights and prerogatives of the crown, as entrusted to the proprietors by the royal charter, and, if possible, to induce the assembly to grant to ex-governors the arrears of their salaries. MS. in the Pa. Hist. Soc. Library.

CHAPTER XII

RELATIONS WITH THE HOME GOVERNMENT

IN this chapter will be discussed the relations between Pennsylvania and the home government, as arising from the nature of the dependence of the colony upon the mother country. More especially the jealousy felt by the English government toward Pennsylvania, and its consequent efforts to extend the jurisdiction of the crown directly over that province, will be considered. Since Pennsylvania further was a part of the British colonial empire, the question of its defense is closely connected with this subject. But as these matters might more properly be treated in a history of English imperial administration, their discussion here will be somewhat brief.

That the Quakers were conscientiously opposed to the bearing of arms, or to the exercise of military force to repel invasion or to quell insurrection, is a well known fact. Their policy of settling all difficulties by pacific measures has by some been criticised as tending to subvert the powers of government, for, as human nature with its vices and passions is generally constituted, compulsion is absolutely imperative for the security of a state. The exercise of such compulsion necessitates some form of military organization. But the commonly accepted opinion of the Quakers seems to have been that the home government would afford them all needful protection against enemies external and internal. Still, most of them declared that they would not oppose the formation of military organizations by those whose conscience permitted them so to do; and some, especially toward the middle of the eighteenth century, were liberal enough to advocate openly the rightfulness

of defensive war,¹ provided they were not required personally to assist in it.² But as for many years the Quakers and their sympathizers formed the bulk of the more wealthy and influential among the population of Pennsylvania, their passive attitude greatly discouraged the establishment of a militia.

They asserted also that they were willing to render to Cæsar his due, but if any contributions they might make were known to be intended for military purposes, an accusation of inconsistency in principle might be brought forward. On the other hand, if they remained strictly consistent and hence gave nothing to defend the province against its enemies, thereby compelling those who differed from them in religious creed to bear all the burdens, they might be justly charged with selfishness. When therefore the crown sent to the assembly orders to grant military supplies, the Quaker majority in that body was unwilling to offend either the crown by a direct refusal, or the body of the Quakers by a compliance contrary to their avowed principles. "They used," said Franklin,³ "a variety of evasions to avoid complying, and modes of disguising the compliance when it became unavoidable. The common mode at last was to grant money under the phrase of its being for the king's use, and never to inquire how it was applied." In fact had the Quaker system of government, lacking as it was in the means of securing by the use of oaths satisfactory judicial information and by force of arms adequate military protection, been carried to its legitimate conclusion, great confusion must have resulted. "If friends," said James Logan,⁴ "after such a profession of denying the world, living out of it and acting in opposition to its depraved ways, * * * cannot be satisfied, but must involve themselves in the affairs of gov-

¹ James Logan was the foremost of these liberal Quakers. His views on the subject of defensive warfare may be seen at length in *Pa. Mag. Hist.*, vi, pp. 403-411.

² Franklin, *Works*, i, p. 151.

³ *Ibid.*, pp. 153-4.

⁴ *Penn and Logan Corresp.*, ii, pp. 351-2.

ernment under another power and administration, which administration in many of its necessary points is altogether inconsistent with this profession, * * * I cannot see why it should not be accounted singularly just in Providence to deal to their portion crosses, vexation, and disappointments to convince them of their mistakes and inconsistency."

In this connection it must be remembered that by the royal charter William Penn and his successors were invested with the powers of a captain general. Although there is no evidence that the Quaker proprietor was at all pleased with the insertion of this clause in the charter, still he was astute enough to see that it was for his interest to accept one power which was distasteful if thereby he could obtain so much beside that was to his advantage. It is not to be supposed that he relished other clauses in the charter. The transmission of the acts of assembly, the maintaining of an agent at London, and the stipulation that, at the request of any body of twenty inhabitants, a minister of the Church of England should be sent to the province, might involve danger to the Quaker system of government in spite of its tolerant spirit. Pennsylvania, furthermore, was a British colony. As such it could not presume to found a system of government which differed widely from that of its neighbors. A government according to Quaker principles then would not agree with the general plan of colonial administration. It had to be modified to suit the exigencies of the time as they became apparent.

In one of the preceding chapters it has been noticed how intimate Penn was with the Duke of York, later James II. To this intimacy may be attributed the fact that, from the stringent measures adopted by the king to extend his policy of absolutism to the colonies, Pennsylvania was exempted. But as soon as it was observed in England that the proprietary provinces were likely to become of considerable importance, the ministers saw how advantageous to the crown would be the purchase of the governmental authority of the proprietors

before they should become too powerful. If this could not be done, they thought the crown ought to assume direct jurisdiction over the proprietary provinces. They based this opinion on the dictum that the crown, which had a right to govern all its subjects, might deprive of their powers of government proprietors or corporations who had abused them. In other words, to quote the statement of two prominent crown lawyers,¹ "upon an extraordinary exigency happening through the default or neglect of a proprietor, or of those appointed by him, or their inability to protect or defend the province under their government, and the inhabitants thereof in times of war, or imminent danger," the crown might "constitute a governor of such province or colony as well for the civil as military part of government, * * * with this addition only, that, as to the civil government, such governor is not to alter any of the rules of propriety, or methods of proceedings in civil causes established pursuant to the charters granted." Since the crown had the right of judging when an abuse of governmental powers had occurred, this conception of the case gave it a wide range of authority.²

As early as May 1689, the Privy Council told the king that the proprietary governments ought to be made more dependent on the crown, and for this reason were "worthy the consideration of the parliament."³ But at the time no steps were taken to accomplish this result. A few months later the Council was informed by a judge in the Lower Counties that for desiring William and Mary to be proclaimed king and queen he had been removed from office.⁴ This gave rise in England to the opinion that the new king and queen had not been officially recognized in Pennsylvania. It is true that for

¹ Chalmers, *Opinions of Eminent Lawyers*, i, p. 31.

² See the more conservative opinion of Chief Justice Holt, who held that before the crown assumed control a careful legal investigation of the case should be made. *Ibid.*, p. 30.

³ *Mem. Pa. Hist. Soc.*, iv, pt. ii, p. 246.

⁴ *Ibid.*

some time doubt existed in the province as to the wisdom of proclaiming their accession. But upon receipt of orders from the king to provide for the defense of the province against the French, and to send war vessels to the West Indies,¹ Gov. Blackwell and the council decided to issue the proclamation.² In reply to the commands of the crown, the governor suggested the establishment of a militia. The Quaker members of the council naturally objected to the proposition, and gave Blackwell to understand that the king of England knew "the judgment of Quakers in this case before Governor Penn had his patent." For this reason, in spite of the arguments of the governor, they declared that, before they would give their consent to anything so contrary to their principles, they would suffer as they had done in England. Blackwell then inquired whether he should use his own discretion in the matter. To this inquiry, however, no definite answer was returned, and the governor declared that he would give an account of the affair to the king and the proprietor.³

Whether the threat of Blackwell was carried into effect is not known, but we have seen that, in October 1692, the king placed the government of Pennsylvania in the hands of Gov. Fletcher of New York. In May, 1693, Fletcher met the assembly of Pennsylvania, and laid before it a letter from the queen calling for assistance in fortifying the frontier of New York. At first his efforts to secure compliance with the letter met with considerable opposition,⁴ but a threat to dissolve the assembly and to annex the province to New York brought that body to terms, and an act was passed levying a land tax nominally to support government, but really to give the assistance required.⁵ A year later Fletcher again summoned the assembly. Being now well acquainted with the religious proclivities of the majority of its members, he pictured to it the piti-

¹ *Col. Rec.*, i, p. 302.

² *Ibid.*, pp. 303-5.

³ *Ibid.*, pp. 306-311.

⁴ *N. Y. Col. Doc.*, iv, pp. 52-53.

⁵ *Col. Rec.*, i, pp. 370-385; *Charter and Laws of Pa.*, p. 221.

able condition of the inhabitants in northern New York, and said that he hoped it would not refuse to "feed the hungry and clothe the naked." Failing, however, to convince it that, by acceding to his wishes it would be performing an act of charity, he took advantage of the neglect of the assembly to mention the queen's letter in the act passed the previous year. Ignoring this act, he asked for a definite reply to the orders from the queen. In reply to this demand the assembly passed a bill similar to the act just mentioned, but with the proviso added, that a portion of the revenue should go to the payment of the salaries of two former deputy-governors, Lloyd and Markham, and that the remainder should be at the disposal of the governor and council. But Fletcher refused to pass the bill in that form, and finding that he could not gain his purpose, dissolved the assembly.¹

On the 20th of the following August the powers of government were restored to the proprietor. Before a committee of the Privy Council, however, he promised that he would speedily return, take care of the government, and provide for its safety and security. He also declared that he would send to the legislature of the province all orders from the crown, and that he believed they would be obeyed. He agreed to appoint William Markham governor, and if the orders from the crown were not obeyed, to submit to it the direction of military affairs. He further assented to the stipulation that all laws passed during the administration of Fletcher should be valid, and said that he would subscribe the declaration of fidelity to the crown. Thereupon, as the legislature of Pennsylvania had passed a bill to raise money for the queen's service, the Privy Council expressed its willingness that Penn should once more assume the government. At the same time it told him that, at the request of the governor of New York, a quota of not more than eighty men should be sent to that province from Pennsylvania.²

¹ *Col. Rec.*, i, pp. 459-472.

² *N. Y. Col. Doc.*, iv, pp. 108-9.

Orders to this effect were sent in August, 1695. Penn also instructed Gov. Markham to see that the orders were obeyed. But in reply to the appeal of the governor the council asserted that the matter was too important to consider without the aid of the assembly. Markham called its attention to the fact that the proprietor had promised to protect the province. "Will you," said he, "be willing that, if an enemy should assault us, I should defend you by force of arms?" To this some of the members of the council gave an affirmative answer, but the Quaker members said "that they must leave every one to their liberty, and that Gov. Penn's instructions therein must be followed, and it being his business, they had nothing to do with it."¹ From the assembly, however, Markham received as much satisfaction as he had from the council, and speedily dissolved it.² But in November, 1696, a series of concessions on his part led to another act to levy a tax for the assistance of New York.³

Leaving for a moment the discussion of military affairs, let us notice another subject of interest, namely, the attempts to enforce the laws of trade. Pennsylvania, it may be said, was in an unfortunate position geographically. It lay between Virginia and New England, and thus became a favorite resort for pirates, smugglers and other notorious characters from both these sections of country and elsewhere. To this fact the feeble character of the Quaker government essentially contributed. The "Colonial Records" contain many notices of freebooters on the coast. Indeed, in the first three volumes are more than forty such notices, exclusive of minor details. The presence of this lawless element in the province, the internal discord he saw there, and his promise to take care of the government caused the proprietor, soon after the promulgation of the act of parliament, 7-8 William III., chap. 22, to order Markham to enforce vigorously the directions and instructions of the commis-

¹ *Col. Rec.*, i, pp. 486-488.

² *Ibid.*, pp. 493-495.

³ *Ibid.*, pp. 506-509; *Charter and Laws of Pa.*, p. 253.

sioners of customs.¹ But the reports of piracy and smuggling in Pennsylvania continued to pour in, and the king told Penn that, unless the laws of trade were better observed, the royal charter would be forfeited. Penn thereupon agreed to take a bond that the deputy governor should execute them more strictly.² Accordingly, in September 1697, he informed Markham and the council in plain terms that reports and accusations against the government of the province had reached England. It was charged that Pennsylvania had not only connived at smuggling, but had countenanced and encouraged piracy. Hence the proprietor commanded the governor and council to issue a proclamation to suppress these practices. After some deliberation the council denied that the province was guilty of the offenses charged, and declared that any failure to enforce the laws of trade had been due to the connivance or inefficiency of the king's revenue officers. Then, February 12, 1698, a proclamation calling upon the magistrates strictly to enforce the laws of trade and punish piracy was issued.³

But the accusations against the province increased in volume. Edward Randolph and Robert Quarry⁴ were especially

¹ *Col. Rec.*, i, pp. 496-7.

² *Mem. Pa. Hist. Soc.*, iv, pt. ii, pp. 270-1.

³ *Col. Rec.*, i, pp. 527-529.

⁴ However zealous Quarry may have been in representing Pennsylvania in as dark colors as possible, his own character does not appear to have been any too good. As early as 1684 his complicity with pirates led to his dismissal from the governorship of South Carolina, and as late as 1708 he was suspected of the same crime. *Hist. Colls. of S. C.*, i, p. 86; *Penn and Logan Corresp.*, ii, p. 289. For this reason it is probable that in many cases his accusations against the province were lacking in truth. See *Penn and Logan Corresp.*, i, p. 162, where Penn describes him as the greatest of villains in the world "for his lies, falsehood and supreme knavery." It must be remembered also that he was an eager advocate for the resumption of royal control over the province. Still, in 1705, the proprietor suggested, probably as a prudential measure, that Quarry be made a member of the council. But, owing to the protest of Logan that such an action might disgust Penn's friends, the suggestion was not heeded. In fact Quarry himself refused to accept the position. *Ibid.*, ii, pp. 121, 196. Later, however, the relations be

zealous in this particular. In constant communication with the Board of Trade, they took every opportunity to represent the province in as bad a light as possible, and suggested that Pennsylvania, in common with the other proprietary governments, be placed under the immediate jurisdiction of the crown.¹ Addresses of vindication from the governor, council, and assembly of Pennsylvania* seem to have had little effect. In 1698, however, the assembly passed "an act for preventing frauds and regulating abuses in trade." In this act the methods of collecting the customs were carefully defined, and provisions made for the suppression of illegal commerce.³ But the complaints of Quarry against the act and against the conduct of Gov. Markham for his alleged complicity in the nefarious practices⁴ caused an order in council to be issued, August 31, 1689, repealing the act and forbidding the continuance of Markham in office.⁵ At the same time the Board of Trade instructed Penn to see that due obedience was rendered to the court of admiralty, and to assist the revenue officers in enforcing the laws of trade. He was further ordered to have acts passed against pirates, and to provide for the establish-

tween Quarry and the proprietor appear to have been more cordial, for Logan withdrew his opposition to the appointment of the former as councillor. *Ibid.*, pp. 195-6, 231, 318. But in spite of the assertion of Dr. E. B. O'Callaghan to the contrary, (*N. Y. Col. Doc.*, v, p. 199) no evidence exists that Quarry ever was a member of the council of Pennsylvania.

¹ *Mem. Pa. Hist. Soc.*, iv, pt. ii, p. 278; *N. Y. Col. Doc.*, iv, pp. 300-302.

² *Mem. Pa. Hist. Soc.*, iv, pt. ii, p. 278; *Col. Rec.*, i, p. 553.

³ See *Charter and Laws of Pa.*, pp. 268-274.

⁴ Watson, *Annals of Philadelphia*, ii, p. 212 *et seq.*; *Pa. Arch.*, 1st series, i, pp. 126-129. Because Andrew Hamilton had been accused of conduct similar to that of Markham, in 1702, the Board of Trade protested against his appointment as governor. But when Penn agreed to give a bond of £2,000 for Hamilton's observance of the navigation acts and of instructions relating to them, the queen saw fit to overrule the protest of the Board. Penn MSS., *Offic. Corresp.*, i, Andrew Hamilton to William Penn, May 7, 1702; *Breviat of Evidence*, Penn and Baltimore, p. 62.

⁵ *Mem. Pa. Hist. Soc.*, iv, pt. ii, pp. 279, 286, 292, 294.

ment of a militia. He was also to be careful that nothing should be done to the prejudice of the crown, and to report to the Board the condition of the province and the result of his efforts to put down the abuses.¹

With these orders in mind, which, if he wished to retain control of the government he saw must be obeyed, Penn arrived in Pennsylvania late in 1699. But he immediately recognized how inconsistent with the principles of a Quaker, and how fatal to his intention to restore peace among the people of the province would be any attempt on his part to carry out the orders regarding the establishment of a militia.² Hence he devoted his attention to the other matters contained in the instructions of the Board. As Quarry had been so instrumental in sending accusations against Pennsylvania, he was called

¹ *Mem. Pa. Hist. Soc.*, iv, pt. ii, p. 294.

² "If the crown itself disowns not the power of raising forces against subjects in rebellion, the proprietary of Maryland is more concerned to defend his fort against the king than we are to defend ourselves against his fort, which is plainly acting in the way of hostility against the subjects of our sovereign lord the king." William Penn to the Earl of Sunderland, *Mem. Pa. Hist. Soc.*, iv, pt. i, p. 184. Here Penn seems to admit the necessity and lawfulness of military force to support government and defend public and private rights against rebels and rioters. Furthermore, to illustrate somewhat amusingly the ideas of William Penn regarding defensive war, the following anecdote, told by Logan to Franklin, may be given as related in Franklin's Autobiography (*Works*, i, p. 153). "He (Logan) came from England (in 1699), when a young man, with the proprietor, and as his secretary. It was war time and their ship was chased by an armed vessel, supposed to be an enemy. Their captain prepared for defense, but told William Penn and his company of Quakers that he did not expect their assistance, and they might retire into the cabin, which they did, except James Logan, who chose to remain on deck and was quartered to a gun. The supposed enemy proved a friend, so there was no fighting; but when the secretary went down to communicate the intelligence, William Penn rebuked him severely for staying on deck and endeavoring to assist in defending the vessel, contrary to the principles of Friends, especially as it had not been required by the captain. This reprimand being before all the company piqued the secretary, who answered, "I being thy servant, why did not thee order me to come down? But thee was willing enough that I should stay and help to fight the ship when thee thought there was danger." See also *Pa. Mag. Hist.*, vi, p. 404.

before the proprietor and council. There he preferred charges against David Lloyd, then attorney-general of the province, for outrageous behavior toward the king's officers, and against Anthony Morris, a justice of the peace who had illegally issued a writ of replevin.¹ In reply Penn declared that the action of Morris was rash and unwarrantable, and promised to make all the restitution in his power. At Quarry's request also he suspended Lloyd from the council, and, in compliance with orders from the Board of Trade which had already been informed of the conduct of Lloyd and Morris,² dismissed them from office.³ The proprietor further acknowledged that there was some reason for the complaints against the province,⁴ and censured the maladministration of affairs during his absence. In fact he "was sometimes warm enough to inveigh highly against past proceedings, not sparing several in express words that were concerned in them,⁵ and laying open in large dis-

¹ It appears that the collector of customs at Newcastle had seized certain goods imported contrary to law, and that Quarry by a warrant to the marshal of the court of admiralty had left them in his custody. The owner of the goods then attempted to obtain from Gov. Markham a writ of replevin. Failing in this, he brought the matter before Judge Morris in the county court. Whereupon Lloyd, totally ignoring his official position in his wrath against Quarry, advised the owner to bring suit against the marshal for detainer of the goods. But when that officer exhibited in court his commission stamped with the images of the king and queen, and with the seal of the high court of admiralty attached, Lloyd seized it and cried, "What is this? Do you think to scare us with a great box * * * and a little baby? * * * 'Tis true * * * fine pictures please children, but we are not to be frightened at such a rate." He proceeded also sharply to criticise the court of admiralty in the province, and eventually persuaded Morris to grant the writ of replevin. *Col. Rec.*, i, pp. 541 *et seq.*, 565, 602-3.

² *Ibid.*, pp. 575, 603; *Mem. Pa. Hist. Soc.*, iv, pt. ii, pp. 281, 283, 294.

³ Morris later appears to have been reinstated. *Mem. Pa. Hist. Soc.*, ii, pt. ii, pp. 202, 204.

⁴ *Penn and Logan Corresp.*, i, p. 18.

⁵ The fact that Penn was unfavorably disposed toward Lloyd gave considerable offense to that person's followers, who of course were bitter against Quarry and his adherents. *Ibid.* But in view of the circumstances it is difficult to see how Penn could have acted differently.

course what would be the consequence if they took not some more effectual ways to satisfy superiors at home."¹ Accordingly in January 1700 he called a special session of the legislature. At this session an act against pirates and privateers, and another similar to the one repealed by order in council, were passed. This having been done the proprietor dismissed the assembly, and entered upon a series of measures to suppress the practices of which Quarry and Randolph had complained.² While engaged in these efforts, directed particularly against piracy, he met with considerable opposition, and lost much of the popularity he had formerly enjoyed.³

In August 1701, the proprietor again summoned the assembly to consider a letter recently received from the king ordering that Pennsylvania should contribute £350 sterling to aid in erecting fortifications on the frontier of New York. But on the ground that the inhabitants were already burdened with heavy expenses and that the adjacent provinces had done nothing, the assembly decided to postpone further consideration of the letter. "In the meantime," said the assembly, "we earnestly desire the proprietor would candidly represent our conditions to the king, and assure him of our readiness (according to our abilities) to acquiesce with and answer his commands so far as our religious persuasions shall permit, as becomes loyal and faithful subjects so to do."⁴

In spite of Penn's efforts to prove that he had done his best to "take care of his government," the Board of Trade, March 27, 1701, submitted to the House of Commons the following report.⁵ It declared that it had often represented to the king how inconsistent with the commerce and welfare of Great Britain

¹ *Penn and Logan Corresp.*, i, p. 18.

² *Pa. Arch.*, 1st series, i, pp. 131, 137-9, 149; *Col. Rec.*, i, p. 581; ii, pp. 12, 13, 22, 24.

³ *Mem. Pa. Hist. Soc.*, iv, pt. ii, pp. 301, 309, William Penn to the Board of Trade.

⁴ *Col. Rec.*, ii, p. 31.

⁵ *Penn and Logan Corresp.*, i, App.

were corporate and proprietary governments. These provinces, said the Board, had not in general answered the chief design for which such large tracts of land and such privileges and immunities had been granted by the crown. They had not complied with the laws of trade. Several of their governors had not been approved by the king, and had not taken the oaths required by the laws of trade. They had passed laws repugnant to those of England and prejudicial to English commerce. Some of them had refused to send to England a complete collection of their laws. They had denied appeals to the king in council. They were the refuge of the pirates and other violators of the laws of trade. By raising and lowering the value of coins, by exempting their own inhabitants from the payment of custom duties, and by harboring fugitives, they had done great injury to other colonies. They engaged in manufactures. They had no regular militia, and were lacking in the proper means of defense. All these statements led the Board to believe that the condition of the corporate and proprietary provinces was one of confusion and anarchy. "To cure these and other great mischiefs in these colonies, and to introduce such administration of government and fit regulations of trade as may make them duly subservient and useful to England," the Board gave its opinion that charters should be resumed by the crown—a proceeding that could be best effected by the legislature of Great Britain. Owing in part to the exertions of Randolph,¹ a bill was introduced in the House of Lords which provided that the charters of government granted to proprietors and corporations in America should be revoked, and that the king should extend his jurisdiction over the provinces affected thereby. Private rights, however, and the validity of laws that had been confirmed by the crown should not be questioned.² But although the bill was twice read, a contentious session caused it to fail of passage.³

¹ *Mem. Pa. Hist. Soc.*, iv, pt. ii., pp. 314-15; *N. C. Col. Rec.*, i, pp. 545-8.

² *Mass. Hist. Coll.*, 1st series, vii, pp. 220-222.

³ Chalmers, *Revolt of the Colonies*, i, p. 304.

Early in 1702, a few months after Penn had returned to England, Quarry sent to the Board of Trade memorials reciting at some length the abuses that existed in Pennsylvania, and censuring Penn for not having taken a more active part in abolishing them.¹ In person and by letter Penn made an elaborate defense before the Board,² and by that body was later assured that, if the evil practices received a salutary check, his powers of government would not be taken from him. Thereupon the proprietor ordered the governor and council and the magistrates to enforce to the utmost the powers of his charter, and the authority of the laws.³ Still, for several years after this time accusations against Pennsylvania were sent to England, and, as we shall see in the next chapter, Penn, desirous of sparing himself any further trouble, entered into negotiations with the crown to dispose of his rights of government. While the negotiations were pending, in 1706, the Board of Trade again represented to the queen the corrupt state of affairs in the proprietary provinces,⁴ but nothing further seems to have been done.

Returning to the discussion of military affairs, we find that as early as 1702 Gov. Andrew Hamilton endeavored to persuade the assembly to establish a militia, but, aside from the aversion of the Quakers to this proceeding, the dispute between the province and the Lower Counties prevented any action from being taken.⁵ By the efforts of the governor, however, one company of militia seems to have been organized; but the opposition to it, particularly from the Episcopalians who hoped thereby to hasten the approach of royal government,⁶ caused it speedily to be disbanded.

¹ *Mem. Pa. Hist. Soc.*, ii, pt. ii, pp. 193-5, 202-3; iv, pt. ii, p. 323.

² *Ibid.*, ii, pt. ii, pp. 196-201, 204-6; iv, pt. ii, p. 325.

³ *Penn and Logan Corresp.*, i, pp. 271-2.

⁴ *Mem. Pa. Hist. Soc.*, iv, pt. ii, pp. 357-8.

⁵ *Col. Rec.*, ii, pp. 78-80.

⁶ *Penn and Logan Corresp.*, i, pp. 124, 152.

In 1704, soon after he had entered upon the duties of his office, Gov. Evans informed the assembly that a letter from Lord Cornbury, the governor of New York, called for a contribution of £350 to help defray the expenses of building fortifications on the frontier of that province. In reply, the assembly referred the governor to the statement of the assembly of August, 1701, and declared that the security of the frontier settlements of Pennsylvania, and the preservation of friendship with the Indians, were sufficient reasons for not raising money at this time.¹ The governor warmly criticised this somewhat evasive policy of the assembly, and vainly urged it to reconsider the matter.² Then he determined to establish a militia, but, as had been the experience of his predecessor, he met with some opposition from the Episcopalians. The Quakers, of course, took no specially active part in the proceedings, but that their quiet influence was injurious to any military organization is very probable. However, by the inducement that members of the militia should be exempted from "watch and ward," the governor persuaded a number of persons to enlist. A proclamation issued shortly after contained a clause to that effect, and at the same time required all the inhabitants who were not conscientiously disposed otherwise to furnish themselves with arms and ammunition. But, as we have seen in a preceding chapter, the establishment of the militia led to serious disputes with the civil magistrates of Philadelphia,³ which eventually caused its discontinuance. Again, in May, 1706, hearing that some French privateers were in the vicinity of the province, Evans made an effort to bring about a military organization.⁴ With the consent of the

¹ *Col. Rec.*, ii, pp. 136-139.

² *Ibid.*, pp. 142-3.

³ *Ibid.*, pp. 151-2, 161-2, 171; *Penn and Logan Corresp.*, i, pp. 287, 318, 320, 322.

⁴ About this time Evans indulged in a very silly performance to frighten the Quakers into taking measures to defend themselves. By a preconcerted arrangement he galloped through the streets of Philadelphia, waving a sword and shouting

members of the council who were not Quakers, he issued a proclamation calling upon the inhabitants to provide themselves with arms and ammunition. Several persons were then appointed to make a careful investigation of the amount of these military necessities. At the same time a general muster of the province was ordered.¹ The governor also asked the advice of the council as to the wisdom of calling an assembly to provide for the safety of the province in case of attack. But it was pointed out to him by the Quaker members of the council that, as every representative except one in the assembly was a Quaker, little would be gained by convening that body. On the other hand the members of council who were not Quakers urged that, if the assembly were called and should then refuse to provide for the necessary defense, the home government would know to whom to attribute the blame.² The governor decided, nevertheless, to summon the assembly, and requested it to aid by a law his efforts to establish a militia. But, finding it unwilling to comply with his wishes,³ he decided to abandon any further action in the matter.

In May, 1709, three months after Charles Gookin became governor, a French privateer landed some men at Lewes in the Lower Counties, and plundered it.⁴ A few weeks later Gov. Gookin sent to the assembly a letter from Queen Anne ordering a quota of 150 men, besides officers, to be sent from Pennsylvania to take part in an expedition against Canada. He suggested, however, that, as the majority of the inhabitants were conscientiously opposed to military service, the assembly should grant £4,000 for the support of government.

to the people to prepare for an attack from the French. The injuries and confusion caused by this prank, or "false alarm," as it was called, made the governor an object of bitter dislike among the Quakers generally. *Penn and Logan Corresp.*, ii, pp. 134-5; Proud, *Hist. of Pa.*, i, pp. 469-71; Gordon, *Hist. of Pa.*, pp. 138-9.

¹ *Col. Rec.*, ii, p. 241.

² *Ibid.*, pp. 243-4.

³ *Ibid.*, pp. 249, 250.

Ibid., p. 448; *Penn and Logan Corresp.*, ii, pp. 343, 348.

With this sum he thought he could obtain the number of men desired. He also declared positively that he would consider no other legislative business until the wishes of the queen were complied with. Thereupon eight of the Quaker members of the council held a conference with a number of the assemblymen,¹ and urged that, although it might not be in accordance with their principles to bear arms, still, it was their duty to obey the queen so far as their circumstances would admit. But the assembly told the governor that, if raising money to hire men for purposes of war were not against the religious principles of its members,² it would willingly contribute thereto. However, in order to avoid the charge of disloyalty and ingratitude toward the queen "for her great and many favors," the assembly dodged the question by resolving that, although it could not "for conscience' sake" raise money for military purposes, yet it would present the queen with £500.³ The governor expostulated with the assembly for granting so small a sum, but it peremptorily refused to aid directly the expedition against Canada, or to increase the amount of the present.⁴ Although it later agreed to make the total amount £800,⁵ owing to disputes with the governor over his refusal to pass several bills, there is no evidence that the money was ever paid.⁶ On account of the fact, however, that the French privateers were still cruising about the coast, Gookin saw fit to issue a proclamation calling for the establishment of a militia, and for a suitable supply of arms and ammunition.⁷ At length the people, weary of bickerings with the governor and of the continual appearance of the animosity between Lloyd and Logan, elected in 1710 an entirely new assembly,⁸ which the following year passed a bill giving £2,000 to the queen.⁹

¹ *Col. Rec.*, ii, pp. 449-459.

² *Penn and Logan Corresp.*, p. 348.

³ *Col. Rec.*, ii, p. 460.

⁴ *Ibid.*, p. 466.

⁵ *Ibid.*, p. 475.

⁶ *Ibid.*, pp. 492-3, 495-502.

⁷ *Ibid.*, p. 469.

⁸ *Ibid.*, p. 516; *American Broad-sides*, Friendly Advice to the Inhabitants of Pennsylvania.

⁹ *Col. Rec.*, ii, p. 538; Bradford, *Laws of Pa.*

Nine years later Gov. Keith told the assembly that, on account of the defenseless condition of the province, he intended to establish a militia. The assembly replied that, as the majority of the inhabitants of the province were conscientiously opposed to the practice of arms, it could not lend its encouragement to the proposition, but said it would lay no restriction upon any one who was otherwise inclined. At the same time the governor was requested to take care that the enlistment should be entirely voluntary.¹ With this request he willingly complied, but there is no evidence that the militia he established ever amounted to anything.² During the remainder of his administration, and during that of Gov. Gordon, no further efforts to induce the assembly to provide for a militia were made. In 1728, however, in an address to Gov. Gordon, the assembly admitted that the presence of many disorderly persons in Pennsylvania was probably due to the fact that there was no militia to keep them in check. Hence it requested him to enforce the riot law of England,³ but with the means at his disposal the governor could do little to quell the disturbances.

Taking up again the discussion of the policy of the home government toward Pennsylvania, we find that, in February, 1712, the Board of Trade was informed that Pennsylvania was unwilling to contribute for defense, and that it had even supplied the French with provisions, while juries impaneled there would not render a verdict against a person guilty of such practices. As a result a bill was introduced into the House of Commons providing for the extension of the jurisdiction of the crown over proprietary provinces. For a brief period it was vigorously pushed,⁴ but, chiefly owing to the lack of interest in colonial affairs, it failed of passage.⁵ In its report, rendered

¹ *Votes*, ii, pp. 272, 274.

² Watson, *Annals of Phila.*, i, p. 272.

³ *Votes*, iii, p. 77.

⁴ Penn MSS., *Autograph Petitions*, Council to Mrs. Penn, April 25, 1716.

⁵ Chalmers, *Revolt of the American Colonies*, ii, p. 5.

not long after this time, approving the action of Gov. Keith in declining to accept from William Penn, Jr. a commission as governor, the Board of Trade said: "We think it our duty upon this occasion to acquaint your excellencies (the lords justices) that we have been informed there was formerly an agreement made between her late majesty and Mr. Penn for [the sale of the government of] this province, and that Mr. Penn did receive part of the money in pursuance of the said agreement. We are not able to judge how far it may suit with the present condition of his majesty's affairs to complete this agreement, but we cannot help thinking that all occasions should be laid hold on to recover at least the dominion of all the proprietary colonies into the hands of the crown.¹" Again in 1721 the Board declared: "We think it our duty on all occasions to represent the advantages that would accrue to your majesty and the public by taking proprietary governments into your own hands, where it may be done agreeable to law and justice." "There is one circumstance," continued the Board, "very particular in this charter (of Pennsylvania), viz.: that the proprietor hath five years allowed him to transmit his laws for the royal approbation, but the crown hath but six months for the repealing them, within which time if they are not repealed they are to be reputed laws to all intents and purposes whatsoever, from whence it frequently happens that several laws unfit for the royal assent continue in force for five years, and after having been disallowed by the crown are enacted again, and by this practice become in a manner perpetual; and this in our humble opinion is a further reason why

¹ *Col. Rec.*, iii, p. 74. When the fact that, in 1729, the crown had purchased from the proprietors of the Carolinas their interests in those provinces became known, some anxiety was felt in Pennsylvania lest the crown might take possession of that province also. But the proprietors declared that the act of parliament passed to enable the crown to make this purchase would not affect Pennsylvania. Penn MSS., *Offic. Corresp.*, ii, J. Logan to John Penn, Nov. 17, 1729; P. L. B., i, Proprietors to J. Logan, April, 1730.

the before mentioned purchase and agreement should be made and completed."¹

These last statements of the Board of Trade suggest the wisdom of a brief digression on the manner in which the home government treated the acts passed by the legislature of Pennsylvania. As the Board intimated, the royal charter provided that a duplicate of all acts passed in the province should within five years after their passage be sent to the Privy Council. If within six months after the date of their receipt they had not been declared void by the king in council and under the privy seal, they should continue to be in force. But for several years after the founding of the province this provision of the charter was not obeyed, much to the annoyance of the proprietor who often requested copies of the provincial acts to be sent him.² At length, in 1694, a number of acts were laid before the king in council. Of this number two were repealed. Indeed Penn himself appears to have petitioned against one of them.³ After 1696, however, when the Board of Trade was established, the custom was to lay before that body all acts passed by the legislatures of the colonies. It in turn laid them before the attorney-general,⁴ and the solicitor-general for their inspection. On the strength of the opinion of these officers for or against the approval of the crown, the Board

¹ *N. Y. Col. Doc.*, v, pp. 603-4.

² *Col. Rec.*, i, p. 318.

³ *Mem. Pa. Hist. Soc.*, iv, pt. ii, p. 253-4.

⁴ In 1705 the proprietor told Gov. Evans that many acts had been placed in the hands of the attorney general for his inspection, but for the want of a large fee no report on them had been made to the Board of Trade. "Be sure," wrote the proprietor, "the very next assembly to let the laws pass with the queen's name, though under my seal, according to charter, the attorney general making the want thereof an ugly objection against the confirming them, though a good fee would go a great way to clear the scruple, if I had it to give him." For that purpose Penn desired that the province would send him fifty or one hundred guineas. (*Penn and Logan Corresp.*, i, pp. 297, 342.) His wishes were not complied with, but after he had spent more than £2,000 a report on the acts was made. Out of one hundred and five transmitted, fifty-two were declared void by the queen in council. *Col. Rec.*, ii, pp. 193, 251.

rendered a report to the committee of the Privy Council for Plantation Affairs, and it in turn to the king in council. But after 1746 the proprietors of Pennsylvania ordered their attorney to leave with the clerk of the Privy Council all acts passed in that province, and not to lay them directly before the Board of Trade. The reason for their doing this may be found in the action taken by the Board of Trade in that year. It seems that about 1733 the statement was made that no acts of Pennsylvania had been regularly repealed. In the original of the royal charter it had been provided that they should be repealed under the privy seal, but in all the copies of that document provision was made for their repeal by order in council. As the former method had never been adopted, the legality of the latter, the procedure hitherto followed, might be questioned. Hence Lord Wilmington, president of the Privy Council, suggested to the proprietors that they consent to have an act of parliament passed to explain the clause in the charter dealing with this subject. Fearing, however, that at the same time a more searching examination of the document might be made, they refused to consider the suggestion,¹ and the following year, a statute was passed in Pennsylvania confirming the repeal of all acts that had been repealed by order in council.²

¹ Penn MSS., *Corresp. of the Penn Family*, John Penn to T. P., July, 1733.

² About the same time a committee was appointed by the House of Lords to consider a representation from the Board of Trade urging that every colony, whether directly subject to the crown or not, should be obliged to send to the Board a complete collection of its laws. When this should have been done, the Board thought that, notwithstanding any limitations by charter or otherwise, the king should repeal any law that had not received the approval of his majesty in council, or that might be found detrimental to the interests of Great Britain. It urged also that all laws, within a year after their enactment, should be sent to England, and, with the exception of such as might be necessary for immediate defense, should be inoperative until confirmed by the king. The House of Lords ordered a bill founded on the representation to be introduced in the next session of parliament. Though nothing further appears to have been done, the assembly of Pennsylvania resolved to send to the king and parliament an address showing how injurious to the rights of the province as derived from the royal charter would

But in 1746 the Board of Trade recommended for repeal three acts passed in 1722, in 1729, and in 1730 respectively. The ostensible reason for this was that, since they had been laid before the Board of Trade only, and not before the Privy Council as provided for in the charter, they were liable to disallowance by the crown. This was assuredly a remarkable action of the Board on a point that had not as yet been fully decided. Had this view been adopted it would, be impossible to say how far the crown might have proceeded to annul the oldest laws of the province. The proprietors thought that such a power of repeal might be extended to all laws not actually confirmed by the crown. If this should be the case the clause in the charter, which made all acts valid unless repealed within six months after their transmission to England, would be a nullity.¹ Hence the proprietors petitioned the king not to confirm that part of the report which recommended the repeal of the three acts. On their intimation to the Board that the assembly by passing an act free from all objectionable clauses would thereby itself repeal the unrepealed acts, the request of the proprietors was granted. Hence, when, in 1749, the assembly contemplated the passage of an act similar to that of 1730, the proprietors suggested that their promise to the Board should be carried out. An acquiescence in this suggestion was followed by a vote of thanks to the proprietors for their intervention.² Several years later the Board acknowledged that by the charter the king had reserved the

be the course of proceeding suggested by the Board of Trade. *Votes*, iii, pp. 214-15; Penn MSS., P. L. B., i, John and Richard Penn to T. P., May 12, 1734.

¹ A few months later the proprietors called the attention of the assembly to an act for reissuing paper money, in which mention was made of the king's confirmation of a previous act. They suggested, therefore, that, as the acts of the legislature were subject only to repeal, not to confirmation by the crown, statements of this character should be avoided. P. L. B., ii, T. P. to the speaker of the assembly, March 9, 1747.

² *Votes*, iv, p. 61. See also *Col. Rec.*, v, p. 500; *Pa. Arch.*, 1st series, i, pp. 716-721.

right of repealing only such laws¹ as were contrary to acts of

¹ In obedience to an order from the Privy Council the Board of Trade, in 1752, prepared instructions for the governors of royal provinces to have the laws then in force revised, and to re enact them in the form of a code, but with the proviso that no law should take effect till the pleasure of the king thereon should be known. The Board was, however, in doubt as to the power of the crown to send such instructions to the governor of Pennsylvania. Hence it resolved to ask the opinion of the attorney-general and solicitor-general. *N. Y. Col. Doc.*, vi, p. 755. As no such instructions were sent to the governor of Pennsylvania, it is probable that the opinion of the crown lawyers was not favorable. In this connection it may be said that, whatever power the crown may have had to instruct the governors of the provinces immediately subject to it, some doubt existed as to how far such a power could be extended to the governors of proprietary provinces. At first the instructions sent to the governors of Pennsylvania related almost exclusively to matters of defense, but gradually included a variety of subjects. *Pa. Arch.*, 1st series, i, pp. 306, 325. In fact, in 1744, a bill to prevent the colonies from issuing paper money as a legal tender was brought into parliament, and one of the clauses purported to give the force of laws to all instructions that the crown might send to the governors. But, largely owing to the efforts of the colonial agents, three bills to accomplish this design failed of passage. *Votes*, iv, pp. 4, 351. Moreover, in the discussion of the bills of credit it has been noticed that the king forbade any paper money to be issued, unless acts for that purpose contained a clause suspending their execution until his pleasure should be known. The assembly of Pennsylvania claimed that instructions of this character were subversive of its liberty and derogatory to the rights of the proprietors. Gov. Morris, however, thought that a distinction existed between the general power of instruction and a royal order founded on an address of parliament, and relating only to matters wherein the prerogatives of the king were concerned. But the assembly failed to coincide with the views of the governor. It held that the powers granted by the royal charter for passing laws gave the governor ample authority to assent to all desirable enactments, and insisted that, since the crown had bestowed such powers, it could not, even upon an address of parliament, resume them or impose limitations other than those contained in the charter. *Ibid.*, pp. 252-262. With this opinion of the assembly the proprietors heartily concurred. They believed that, although there was considerable difference between the powers of the king and those of a proprietor, yet, strictly speaking, a person might be in the service of the latter and not in that of the former. Granting that the powers of the king were the greater, still it was unreasonable to suppose that he could exert them in the proprietary administration where and when he might see fit. Hence, in 1755, the proprietors criticised Gov. Morris for his attempt to defend royal instructions, because, said they, if the assembly doubted the legality of them, either it or the governor should appeal to the crown for a decision thereon. Indeed, Thomas Penn declared that, if he had been governor he would have passed the bill for the issue of paper money in

parliament, to his prerogative, and to the allegiance due him from the proprietors and inhabitants of Pennsylvania.¹

Up to this point we have noticed how remarkably hostile to the proprietary form of government was the attitude of the Board of Trade. The crown assumed jurisdiction over the Jerseys in 1702, and over the Carolinas in 1729, and suspended proprietary government in Maryland from 1690 to 1715. But, with the exception of the brief administration of Gov. Fletcher, Pennsylvania was left undisturbed. With this the Board was never satisfied. It probably would not have been content unless a system of imperial administration had been established and all the colonies directly subjected to the crown. Failing in its efforts in this direction, when, in 1760, the acts, the acceptance of which had been secured through the corruption of Gov. Denny, came up for its consideration, the Board seized the opportunity to express at some length its opinion on the relations existing between the assembly and the proprietors, and on the failure of the latter consistently to exercise the prerogatives of the crown with which they had been entrusted. It seems that the counsel for the assembly had declared that by the charter the right of repealing acts of the provincial legislature was confined to the preservation of the sovereignty of the crown, and to the mere general dependence of the subject. However discretionary the exercise of that power of repeal by the crown might be, the

spite of any royal instructions to the contrary. At the same time the proprietors did not think it wise to direct the governor to disobey orders from the crown. Penn MSS., T. P. to Peters, March 22, 1755; *Ibid.* P. L. B., iv, Feb. 21 and Oct. 25, 1755. Their policy in this respect was due to the opinion of the attorney general, who had stated that to disregard orders from the king was not "safe, advisable or consistent" with the duty of the governor. *Votes*, iv, pp. 344-7. But the ministers later admitted that royal instructions, even though founded on a request from parliament, were not binding in all cases, and agreed to withdraw the one relating to the issue of paper money. Penn MSS., *Supp. Proc.*, T. P. to Peters, Oct. 25, 1755.

¹ Penn MSS., *Supp. Proc.*, T. P. to Peters, Oct. 31, 1753; *Ibid.*, P. L. B., iv, to Morris, Feb. 26, 1755.

counsel asserted that the proprietors were excluded from claiming any benefit from it, and that, the consent of their deputy having once been given, they were deprived of any right to complain. The Board, however, thought that, no matter how jealously the crown might guard the sovereignty the provision of the charter that the acts of the provincial legislature should be in accordance with equity showed that the crown should be just as jealous in behalf of the subject, so that the acts should not be contrary to reason or repugnant to the laws of England. Hence, if the king had reserved to himself the right of final hearing in judicial appeals, it must not be supposed that he had divested himself of the right to hear appeals in legislative matters. Many laws of the province, continued the Board, had been declared void by order in council, and not under the privy seal. That the assembly in 1734 had passed an act to confirm their repeal was true. But the right of the crown did not originate in, or derive any part of its validity from the charter, or from any confirmation of it by the legislature of Pennsylvania. The crown had an inherent portion of sovereignty by which it owed protection to all its subjects alike, and for this reason had a clear right to examine any law. It could not, therefore, preclude itself from receiving information which any one might furnish, and by which it might be better qualified to exercise the power it had reserved. The crown then would hear the proprietors in common with any other person in the province, all of whom should be considered as being with them parties to every law, having by the nature of the constitution given their assent to it, either actually, or by their representative. The crown disregarded the person who complained, and attended solely to the justice of the act and to the merits of the complaint. The manner of passing the bills in 1759 showed that the assent to them was really not the act of the proprietors, and the Board believed it unjust to contend that they should be bound thereby. The position of the assembly was criticised as in-

consistent with the nature of all deputed power, and might, if taken concurrently with its proceedings, establish a system of collusion between governors and assemblies, especially if the popular body should be allowed to use public money to corrupt the governor. For one branch of the government to corrupt the person entrusted with the prerogatives of the other, the Board believed to be a "mischief in government." The act of the governor in passing laws contrary to his instructions, and to the confidence reposed in him by the proprietors, gave the Penns a just title to redress. As individuals who had been wronged, and as persons entrusted with certain powers of government, they could apply to the crown for relief. If some of the acts under consideration, or rather the more dangerous claims set up to support them, were permitted to remain in force, the Board declared that the rights of the crown, either reserved to itself or delegated to the proprietors, were likely to be destroyed. All the acts, even those which from peculiar circumstances it was thought fit to recommend for approbation, contained some encroachment on the prerogative of the proprietors, as they were trustees for the crown, or on their property as landholders in the province. To check such encroachments, and to restrain such irregularities, the constitution admitted of two methods, viz., the hold which the proprietors had over their governors, and the king's prerogative of repeal. An abridgement of that prerogative had been contended for by the assembly; and the right of the proprietors to instruct their deputy had been denied, and the justice of indemnifying him against his principals asserted. The proprietors, said the Board, had not improperly exercised their prerogatives, but they ought to have been more uniform in their maintenance of them. Though they declared themselves entrusted with the prerogatives of the crown, they had not duly supported the constitution of the province and their own dignity as a very material part of the legislature. They had regarded themselves, declared the

Board, in the narrow and contracted view of landholders, and had been oblivious of their prerogatives so long as their property remained secure; and never "felt for their privileges as proprietaries till, by the diminution of those privileges, their interests were affected as individuals." The Board thought it to be its duty to "bring back * * * the constitution of the colony to its proper principles, to put the government in a regular course of administration, to give to every branch of it the exercise of its proper powers, to restore to the crown in the person of the proprietaries its just prerogatives, to check the growing influence of the assembly, and to distinguish * * * the executive from the legislative parts of government." The proprietors had consented to share their prerogatives with the assembly, but that body had insisted on engrossing them. It was vain to tamper with the king's prerogatives, said the Board. Every new concession became the foundation of some new demand, and that in its turn of some new dispute. The Board then sharply censured the supineness of the proprietors and the ill-restrained encroachments of the assembly. It declared that, since the governor and assembly were the only branches of the legislature, there being no intermediate body except the proprietary council, whose advice, however, the governor might accept or reject, to interpose between the encroachments of the assembly or the oppression of the proprietors, the peculiar circumstances of Pennsylvania made restriction particularly necessary. The assembly appeared to claim from its constitution the extraordinary power of a perpetually existing body, subject neither to prorogation nor dissolution. The interposition of the crown was necessary to keep within bounds the authority of the assembly, and to protect its own rights which had been gradually surrendered by the proprietors, and which, in the opinion of the Board, would "always be invaded while the prerogatives of royalty" were placed "in the feeble hands of individuals," and the powers of the crown exercised without the authority to render them

effective.¹ In the next chapter we shall see how this idea, long cherished by the Board of Trade, that all the colonies should be under the immediate jurisdiction of the crown, appeared in the case of Pennsylvania almost on the point of realization.

Resuming the discussion of matters connected with the defense of the province, we find that, in 1739, on account of the approaching war with Spain, the proprietors instructed Gov. Thomas to establish a militia. At the same time they warned him not to allow such a proceeding to violate the principles of the Quakers.² In the following October the governor recommended to the assembly the enactment of a law in compliance with the wishes of the proprietors. In reply the assembly declared that, although it was willing that those whose conscience would allow them so to do should bear arms, a law to establish compulsory military service would violate a fundamental principle of the provincial constitution, viz., the clause in the charter of privileges which insured to all liberty of conscience. On the other hand, to compel some to serve while others were exempted from service would show partiality. The assembly further hinted that, as former governors had made use of the powers granted by the royal charter to form military organizations, the present governor might do the same, except so far as those powers were limited by provincial laws relating to liberty of conscience. The assembly then asserted that for the defense of the province it would trust in the mother country and in God.³ To this assertion of the assembly, however, and in reliance on the fact that petitions requesting measures to be taken to place the province in a position of defense had been sent to that body, Thomas set forth at some length the disadvantages of a voluntary militia, and the necessity of establishing by law one that would be adequate for the purpose. But after several sharp messages and retorts

¹ *Col. Rec.*, viii, pp. 525-29, 549-52.

² P. L. B., i, John Penn to Gov. Thomas, Aug. 2, 1739.

³ *Votes*, iii, pp. 353, 362.

had been exchanged, the assembly somewhat testily declared that on the subject of defense it had nothing further to say.¹

In 1740 the king sent to Thomas instructions concerning a supply of military stores, and the equipment and transportation of soldiers for an expedition against Carthagera. The governor immediately communicated his orders to the assembly, but obtaining no satisfaction from it, he made vigorous efforts to establish a voluntary militia. In this he was successful, for eight companies of 100 men each were organized in Pennsylvania and the Lower Counties, and by private subscription supplied with provisions and sent on the expedition mentioned.² Unfortunately, however, a number of persons who joined this organization were apprentices and indented servants.³ This

¹ *Votes*, iii, pp. 364-380.

² Gov. Thomas to the Board of Trade, Oct. 20, 1740; Penn. MSS., *Offic. Correspond.*, iii, to John Penn, Nov. 4, 1740; *Ibid.*, P. L. B., i, John Penn to Gov. Thomas, Nov. 26, 1741; *Col. Rec.*, iv, p. 466; "The Case of the Inhabitants in Pennsylvania," 1746; *Pennsylvania Gazette*, April 17, July 10, Sept. 18, 1740.

³ The earliest complaint against this practice in Pennsylvania appears to have been made in 1711. *Votes*, ii, pp. 101-103. In regard to these persons it may be said that it was a custom for immigrants of the poorer class to pay for their passage by selling their labor for a number of years to the captain in whose ship they came. The captain usually sold their service for a specified term to farmers. But by enlisting these indented persons as volunteers recruiting officers deprived the farmers of both their labor and the amount they had paid for it. Washington, *Works* (Sparks' Ed.), ii, pp. 168, 189, 199. Still, in extenuation of the conduct of the officers and servants, it was claimed that many of the latter had been cheated by the ship-owners and forced to perform hard labor with but little compensation. Gov. Thomas to the Board of Trade, Oct. 20, 1740; *Col. Rec.*, iv, p. 467. The grievance again appeared during the French and Indian war. Upon the receipt of a number of petitions against the practice, the assembly instructed Franklin to request Gen. Dunbar to discharge recruits who were known to belong to this class of persons. Failing to obtain satisfaction from that officer, the assembly turned to the governor. In reply to its address he acknowledged that the practice was somewhat unjust, but expressed doubt whether the right of the crown to the personal service of its subjects could be restricted by private contract. The assembly rejoined that a servant regularly indented and imported into a colony under an act of parliament was not liable to volunteer duty. It then requested the governor to issue a proclamation ordering the magistrates to lend their assistance to restrain the enlistment of

fact called forth a remonstrance from the assembly, in which the request was made that not only should no more of those persons be enlisted, but those already in the service should be discharged. Still it agreed to vote £3000 to the king's service, but stipulated that the money should not be paid till its wishes were granted.¹ Thomas said in reply, that to discharge the servants would cause a mutiny and eventually the disbandment of the militia.² When, therefore, the assembly threatened to appeal to the king against him, the governor declared that he was only too willing for his majesty to be informed of the condition of affairs.³ To anticipate any action on the part of the assembly he determined to send to the Board of Trade a representation of the case. The occasion for his taking this step seems to have been the wrathful rejection by the assembly of a somewhat importunate petition for defense which intimated that, unless the demands of the petitioners were complied with, an appeal would be made to the king. The assembly characterized the petition as extraordinary in nature, untruthful in its insinuations, a gross insult to the house, and a breach of its privileges.⁴ Thereupon, October 20, Thomas

the servants. But on the ground that it would involve an action on his part which would be extra-judicial in character, the request was denied. To make the matter obvious, Gen. Shirley said, in reply to a letter from the council, that, in order to prevent any injury to the service, he could not countermand his instructions to the recruiting officers to enlist all persons who offered themselves, and threateningly added that, unless the magistrates ceased to interfere with the duties of those officers, the consequences would be unpleasant for the province. *Votes*, iv, pp. 458, 535-542; *Pa. Arch.*, 1st series, ii, pp. 578, 587 *et seq.* But, in 1756 and 1757, acts were passed which forbade the enlistment of servants, and which provided for the reimbursement of masters who had suffered in this respect.

¹ It appears that the money was later paid into the English treasury. *Votes*, iii, pp. 409, 492. "The assembly," wrote Mr. Peters to Thomas Penn (Penn MSS., *Offic. Corresp.*, iii, Oct. 24, 1741) might better have paid the charges for raising the levies than sent the money on a wild-goose chase to England." *Pennsylvania Gazette*, Aug. 21, 1740.

² *Col. Rec.*, iv, p. 467.

³ *Votes*, iii, pp. 390-392, 395-422.

⁴ *Ibid.*, pp. 433-4.

dispatched to the Board of Trade a letter in which the history of his controversy with the assembly was carefully reviewed. The greater part of the letter was devoted to a severe arraignment of the Quakers for their refusal to obey the orders of the crown. He declared that, in spite of the exertions of himself and others to persuade the Quakers not to serve in assembly, that sect immediately put forth all its strength to control the elections, and informed its opponents that, since Pennsylvania had been given to a Quaker for the benefit of Quakers, all who did not like their system of government might go elsewhere. The bitterness of the messages sent him from the assembly, the governor said, was very inconsistent with the meekness and humility commonly ascribed to Quakers. He asserted further that, notwithstanding insinuations of the Quakers to the contrary,¹ he had not ordered the recruiting officers to allow indented servants to enlist. He suggested, therefore, that measures be taken to make the assembly more obedient to the commands of the king.

By some means Richard Partridge, the agent of the assembly in England, secured a copy of this letter and sent it to the assembly. An outburst of wrath was the result, and petitions were sent to the king and to the proprietors requesting that Thomas be removed from office.² This expedient failing,³ the opponents of the governor resorted to other means to complicate his relations with the assembly. Their opposition was increased by a rumor that all Quakers would be removed from office.⁴ Hence, to carry out their schemes against Thomas, they persuaded many of the Germans who had never voted before to

¹ Penn MSS., *Offic. Corresp.*, iii, Address to the Germans, Sept. 29, 1741.

² *Ibid.*, Gov. Thomas to F. J. Paris, May 14, 1741; to John Penn, July 14 and Oct. 27, 1741; T. P. to Paris, March 27, 1741; R. Peters to T. P., Oct. 24, 1741; W. Allen to T. P., Oct. 24, 1741; *Votes*, iii, p. 446; *Pa. Arch.*, 1st series, i, p. 628; *Pennsylvania Gazette*, June 10, 1742.

³ *Pennsylvania Gazette*, June 17, 1742.

⁴ Penn MSS., *Offic. Corresp.*, iii, R. Peters to John Penn, April 4, 1741.

cast their ballots for candidates who were known to be opposed to the establishment of a militia and to the expenditure of money for military purposes. As the Germans had been accustomed to a military government in their native country, it is easy to see how an argument based on this fact must have carried with it great weight.¹ In 1742 the struggle between the friends and enemies of the governor culminated in an election riot at Philadelphia in which both parties were guilty of considerable violence.² But the Quakers and their adherents were victorious in the election, and an assembly hostile to Thomas was returned.

About a year after Gov. Thomas had sent his letter to the Board of Trade it seems that a petition from Pennsylvania was dispatched to the king describing at some length the unprotected condition of the province, and complaining that the Quakers by maintaining their majority in the assembly had prevented any measures for defense from being adopted. Therefore the petitioners "encouraged by his majesty's gracious and paternal care for the remotest part of his subjects," did "most humbly pray and beseech his majesty, as the only resource left, that he would be pleased to order" for the safety of the province "what in his great wisdom" should be "thought meet and convenient." The petition was referred to the Board of Trade with direction, "to inspect the charter granted to the proprietors, together with the laws of the province, and to procure such other lights as might enable them to report to the Committee [of the Privy Council for Plantation Affairs] "whether the said province" was "not obliged to provide for its own security and defense." Counsel on behalf of the petitioners and of the assembly was

¹ Penn MSS., *Offic. Corresp.*, iii, W. Allen to John Penn, March 27, 1741; *Pa. Arch.*, 1st series, i, p. 633; Watson, *Annals of Phila.*, i, p. 474.

² *Votes*, iii, pp. 497-502, App., pp. 564-589; Watson, *Annals of Phila.*, i, p. 721; *Col. Rec.*, iv, p. 620 *et seq.*; Penn MSS., *Offic. Corresp.*, iii, W. Allen to T. P., July 8, Nov. 20, 1742.

then heard before the Board. At the conclusion of the hearing the Board reported that, from both the nature of society and the terms of the royal charter, Pennsylvania was obliged to provide for its own defense. The Board further saw no reason why "this colony should be exempted from the general custom of all other colonies in America," especially as there was no law in existence that gave it any such right of exemption. Judging somewhat superficially the tenets of the Quakers, the Board declared that the law concerning liberty of conscience related "merely to matters of religion, and not to affairs of government." In reply also to the contention of the counsel for the assembly that, from the clause in the royal charter which granted them the powers of a captain general the proprietors were obliged in the case of emergency to undergo the expense of defending the province, the Board asserted that they were no more obliged to be at that expense than were the governors of any other colony who by their commissions were entrusted with similar powers. Hence the Board recommended that the king should instruct Gov. Thomas to inform him of what might be necessary for the security of the province; and, in spite of the opposition of the counsel for the assembly, this report was accepted and the instruction duly sent.¹ Then Thomas requested the assembly to draw a bill providing for a compulsory militia and for a supply of arms and accoutrements. In reply the assembly curtly said that, since former assemblies had given decisive opinions on this subject, there was no reason for repeating them.² The governor thereupon issued a proclamation calling upon all persons capable of bearing arms to prepare for war,³ but, as the assembly still declined to furnish any assistance, the proclamation accomplished practically nothing.

¹ *Pa. Arch.*, 1st series, i, pp. 633-5; *Votes*, iii, p. 537.

² *Votes*, iii, 537-47.

³ *Ibid.*, p. 553; *Col. Rec.*, iv, p. 696; *Pennsylvania Journal*, June 14, 1744.

The increasing urgency of the petitions for defense,¹ as well as the instructions he had received from the crown, caused Thomas, soon after the beginning of King George's war, to send to his majesty a representation similar to that he had dispatched to the Board of Trade in 1740. This was immediately referred to the Board, but the attorney-general and solicitor-general now gave it as their opinion that, although it was the duty of the assembly to make provision for the support of troops and the building of fortifications, that body as then constituted was the immediate judge of the methods to be employed, and therefore could not, except by an act of parliament, be forced to do otherwise than it might see fit.² While Thomas, somewhat disheartened at this opinion, was considering the advisability of raising another voluntary militia, a request came from New England to send men, ammunition and provisions for the garrison at Louisburg. When the governor urged the assembly to comply with the request it refused to grant money to buy POWDER, for that was an article of war; but it did vote £4,000 to be expended by him for the purchase of "bread, beef, pork, flour, wheat or *other grain*." Some of the council advised Thomas not to accept money to be spent for provisions, as not being what was really desired; but he replied, "I shall take the money, for I understand very well their meaning; *other grain* is gunpowder," which he accordingly bought and no opposition was made to it.³ By a concession to the advocates of paper money he also succeeded, the following year, 1746, in persuading the assembly to grant £5,000

¹ Penn MSS., *Offic. Corresp.*, iii, Gov. Thomas to John Penn, Sept. 27, 1743; *Votes*, iv, p. 25. One of these petitions was sent to the king from the mayor and commonalty of Philadelphia. Hazard, *Register of Pa.*, i, p. 271.

² Penn MSS., P. L. B., ii, T. P. to Thomas, March 7, 1745.

³ Franklin, *Works*, i, p. 154; iii, p. 10; Penn MSS., *Supp. Proc.*, T. P. to Peters, Dec. 8, 1745. "The Case of the Inhabitants in Pennsylvania," 1746; *Col. Rec.*, iv, p. 769.

to be used in a projected expedition against Canada.¹ About the same time rumors of an attack by the French caused him to raise by enlistment another body of 400 men, who for a while were held in readiness for this expedition,² but were eventually disbanded.

With ill-concealed anxiety Benjamin Franklin had witnessed the failure of the governor to secure the co operation of the Quaker assembly in establishing a permanent militia.³ Seeing the danger of attack from the French and Spanish, in November, 1747,⁴ he published a pamphlet called "Plain Truth." In it he pictured the utter helplessness of the province, sharply criticised the Quakers for their unwillingness to relinquish their power in the assembly, and accused of selfishness and inconsistency the rich men of the opposite party, who, while themselves not contributing toward a military organization, censured the Quakers for their shortcomings in this respect. He then made a powerful appeal for a militia, and assured the Quakers that, although they themselves might be "resigned and easy under this naked, defenseless state of the country," it was "far otherwise with a very great part of the people," who had no confidence that God would protect those who neglected rational means for their security.⁵ In spite of replies from the Quakers⁶ a plan of association⁷ was

¹ *Votes*, iv, pp. 38-9; Hazard, *Register of Pa.*, iii, p. 20; Penn MSS., *Offic. Corresp.*, iii, Gov. Thomas to T. P., June 23, 1746.

² Penn MSS., *Offic. Corresp.*, iii, Gov. Thomas to T. P., July 28, Nov. 3, 1746; P. L. B., ii, T. P. to Thomas, Sept. 16, 1746. "The Case," etc. *Col. Rec.*, v, p. 40.

³ Franklin, *Works*, i, p. 144.

⁴ *Ibid.*, iii, pp. 1, 3; *Pennsylvania Gazette*, Nov. 12 and 19, 1747.

⁵ *Ibid.*, iii, pp. 4-21.

⁶ One pamphlet called "Necessary Truth," called upon the people to improve their moral and religious character, and declared "that rectitude of life and contrition of soul would procure the salvation of the whole, and not dependence on arms." Another of the same general nature was called, "A Treatise showing the Need we have to rely on God as sole Protector of this Province."

⁷ Rev. Gilbert Tennent, by his vigorous sermons in support of defensive war, greatly encouraged the movement.

drawn, chiefly by Franklin himself, and was signed by over 1,200 persons. Before long 10,000 people in the province and Lower Counties were under arms, formed themselves into companies and regiments, chose their own officers (except field officers, who since the resignation of Gov. Thomas were appointed by the president and council of the province), elected a military council, the orders of which were binding until the king should command otherwise, and met at stated periods for drill. A lottery to defray the expenses of building a battery and of purchasing cannon was also very successful.¹ The organization lasted for some time after the war closed.

How did the proprietors view this somewhat bold procedure? Writing to Mr. Peters, March 30, 1748,² Thomas Penn said, "I am greatly concerned that, when there were both a governor and a constitution, a military commonwealth should be formed. It strongly resembles treason. The people should have desired the president and council to appoint officers for their training, and put themselves under their direction, and not presume to establish any military council to whom they should be accountable. This is erecting a government within a government, and rebelling against the king's authority." At the same time the chief proprietor admitted that, were he in the position of the colonists, he would certainly have joined the association.³ Later, however, the favorable light in which Mr. Peters represented the association caused the proprietors to become more favorable toward it, and even to send contributions of cannon.⁴

¹ Franklin, *Works*, i, pp. 145-148; iii, pp. 2-3; vii, pp. 20-24; *Pennsylvania Gazette*, Dec. 12 and 29, 1747, January to September, 1748; Penn MSS., *Supp. Proc.*, R. Peters to the proprietors, Feb. 1, 1747; Watson, *Annals of Phila.*, i, pp. 272-3.

² P. L. B., ii.

³ *Ibid.*, Aug. 31, 1748; to the council, March 30, 1748.

⁴ Franklin, *Works*, i, pp. 149-50, note; P. L. B., iii, T. P. to Hamilton, Aug. 27, 1750.

In 1754, shortly before the beginning of hostilities with the French and Indians, the proprietors ordered Gov. Morris to procure the passage of an act providing for compulsory military service, and for the adoption of all measures necessary to defend the province. But the governor was also instructed to inform the assembly that the proprietors wished all measures taken to be as little burdensome to the people as possible, and in no case to violate the principles of any person who was conscientiously opposed to participation in military operations.¹ In the following October the orders of the proprietors were confirmed by the secretary of state, who informed Morris that, to aid the other colonies in their efforts against the French, Pennsylvania was expected to furnish as its quota 3,000 men and the supplies necessary for them.² The governor immediately laid these directions before the assembly. While he was arguing with that body over its claims concerning the issue of bills of credit, the taxation of the proprietary estates, and the disposal of public money, Gen. Braddock, the recently appointed commander-in-chief of the military forces in the colonies, called upon him for aid in the proposed expedition against Fort Duquesne. The governor then told Braddock how earnestly he had tried to persuade the assembly to follow a course of action that would not conflict with his instructions from the king and from the proprietors. In reply Braddock sharply censured the assembly for its "improper and pusillanimous behavior." He declared that faction and opposition existed while "liberty and property were invaded." He also criticised the assembly for its encroachments on the prerogatives of the crown, and hinted that "he would repair by unpleasant methods what, for the character and honor of the assembly, he should be happier to see cheerfully supplied." In other words he threatened that, unless the assembly afforded the aid re-

¹ *Pa. Arch.*, 1st series, ii, p. 189.

² Penn MSS., *Offic. Corresp.*, vi, Sir Thos. Robinson to Gov. Morris, July 5 and Oct. 26, 1754.

quired, the home government would take stringent measures to force it so to do.¹

On account of Gen. Braddock's criticism of the assembly, it has been generally supposed that Pennsylvania did not give him the assistance he desired. But it is quite probable that, from public and private sources taken together, he received more aid from that province than he did from Maryland and Virginia combined. True, in the minutes of the proceedings of the assembly there is no evidence that that body, by assenting to the amendments of the governor to its bills, gave up any of its claims in order to render any direct aid to Braddock. Still, the accounts at the close of the session, as well as statements made in February, 1757, show that nearly £8,000 was expended in the relief of French deserters, in presents to friendly Indians, in provisions, in support of the families of soldiers, and in cutting a road toward the Ohio.² From other sources also it appears that the assembly contributed 400,000 lbs. of flour for Braddock's army.³ In addition to this, besides the efforts of Gov. Morris, Franklin established an army post between Philadelphia and Winchester, and in a variety of ways was of great service to Braddock. These facts will show that, as Braddock himself later admitted, although Virginia and Maryland "had promised everything, they had performed nothing," while Pennsylvania, "which had promised nothing, had performed everything."⁴

¹ Penn MSS., *Offic. Corresp.*, vii, Braddock to Morris, Feb. 28, March 10, and May 24, 1755.

² *Votes*, iv, pp. 481, 699.

³ Penn MSS., P. L. B., iv, T. P. to Peters and Morris, Aug. 13, 1755, *Supp. Proc.*, to Peters, Aug. 14, 1755.

⁴ *Pa. Mag. Hist.*, xvii, p. 272; xi, p. 96; Franklin, *Works*, iii, pp. 405-7; *Pa. Arch.*, 1st series, ii, p. 368; *Col. Rec.*, vii, p. 254; Penn MSS., *Offic. Corresp.*, vii, letter from Braddock to Morris, June 11, 1755, acknowledging the receipt of provisions. *Ibid.*, letter from R. Hockley to Thomas Penn, June 23, 1755, stating that in their promises and contracts Virginia and Maryland had disappointed Braddock. *Ibid.*, letter from Thomas Penn to Mr. Gordon, Aug. 3, 1755, stating that the

Many petitions, chiefly from the inhabitants of the frontier, were now sent to the assembly. In them were harrowing descriptions of Indian atrocities and of the desolate condition of that section. The assembly was earnestly desired to remember that all persons in the province were not of the Quaker persuasion, and that many believed, as did Franklin, that rational means of defense were far wiser than supine dependence on the intervention of Providence. Gradually the petitions grew bolder in tone and demanded that the assembly cease its continual contention with the governor, and no longer make the religious scruples of the majority of its members a bar to the passage of measures for the proper defense of the province.¹ At the same time several petitions were sent to the king, requesting that some action be taken to force the assembly to provide for the safety of the country. The defeat of Braddock encouraged the opponents of the Quakers, and Franklin, who for a while appears to have been somewhat disgusted with their unreasonable behavior in clinging to their seats in the assembly,² seized the opportunity to bring in a bill for the establishment of a voluntary militia.³ After a preamble containing the usual apology for the unwillingness of the Quakers to be concerned in military affairs had been added, the bill was passed, and the governor, seeing that nothing better could be obtained, signed it, November 25, 1755. But as soon as the act was laid before the Board of Trade the disapproval of that body was expressed in strong terms. It declared that the petitions for defense which had been sent to the king had been examined, and that it believed the need of fortifications

assembly, besides giving £10,000 for Shirley's expedition against Canada, had paid for cutting a road, for provisions, and for the maintenance of army posts. "The ministers seem very well satisfied with what has been done by the assembly, and I believe will not take into consideration the method taken by the assembly for raising the £15,000 on their own notes. * * * The supply of provisions, forage and wagons which the Virginians failed in is very acceptable here." *Ibid.*, *Supp. Proc.*, T. P. to Peters, Aug. 14, 1755.

¹ *Votes*, iv, p. 495.

² *The Friend*, xlvii, p. 162.

³ *Votes*, iv, p. 509.

and of an adequate military organization in Pennsylvania was very great. It criticised the neglect of public safety that seemed to be so characteristic of an assembly composed largely of Quakers. Whatever might be the military powers granted by the royal charter to the proprietors, said the Board, they were ineffectual and inoperative without the concurrence of the legislature in framing penal and compulsory militia laws by a proper and constitutional appropriation of money for military purposes. The counsel for the assembly then asserted that in their exercise of the military power the proprietors had been supported by the militia law under consideration, and an act granting £55,000 to be raised by taxation. By the provisions of the last named act the money raised should be expended by a committee of the assembly for the support of friendly Indians, the relief of distressed settlers, and for "other purposes." It might be argued that the words "other purposes" referred to military operations, but, since the majority of the committee of the assembly were Quakers, the Board thought that such a construction was absurd. The Board declared further that the law for establishing a voluntary militia was improper and inadequate. As a basis for this opinion the Board said that, because no methods were provided to compel persons to organize for defense or to oblige those who were conscientiously opposed to the practice of arms to find substitutes, the act appeared rather to encourage exemption than to promote a satisfactory military service. The Board also characterized as improper and ineffectual the following provisions of the bill: That the officers should be elected by ballot; that no persons under age should be enlisted, and that the militia should not be forced to march more than three days beyond the inhabited portions of the province, or be detained in a garrison against its will longer than three weeks. Little benefit, asserted the Board, could be derived from an act the preamble of which declared the principles of the assembly to be opposed to the bearing of arms, and compulsion to be a violation of the

constitution and a breach of the privileges of the people. Moreover the Board said that no steps could be taken to make adequate provision for the defense of Pennsylvania while a majority of the assembly was composed of a people who, though not one-sixth of the population of the province, and antagonistic to the principles and policy of the mother country, were nevertheless permitted to hold offices of trust and profit and to sit in the assembly without their allegiance being secured by oath. To correct this and similar evils, the Board thought that an act of parliament was the only remedy. The militia law was accordingly repealed by the king in council.¹

The proposition to exclude Quakers from sitting in the assembly, a proceeding which the Board of Trade appears to have believed absolutely necessary for the security of the province, had been urged for many years by the opponents of that sect. As early as 1707 Quary had made to the Board a suggestion of this character,² but at the time no action was taken on it. In 1740, when Gov. Thomas was trying to persuade the assembly to establish a militia, the subject came up again for discussion. A few months after he had sent to the Board the letter to which allusion has been made, he again complained about the behavior of the Quakers, and censured them for "thrusting themselves into the assembly." He admitted that, if they assented to an act for establishing a compulsory militia, they would be inconsistent with their principles. But, said he, if they did not have the boldness to pass an act exempting themselves from service and from contribution, they should at least refuse to serve in assembly. He intimated also that he might find it necessary to send to the king a further representation of the circumstances of the province, implying thereby that stringent measures should be taken to provide for the defense of Pennsylvania, even to the extent of excluding the Quakers from the assembly

¹ *Col. Rec.*, vii, pp. 272-278.

² *Mem. Fa. Hist. Soc.*, iv, pt. ii, p. 363.

by act of parliament.¹ With this opinion the proprietors agreed.² In fact John Penn wrote to his brother that he believed the mother country "by expelling the Quakers or by enacting severe laws against them would make Pennsylvania serviceable to her."³ The same proprietor wrote also to the speaker of the assembly that, unless that body enacted a law for the defense of the province, the Quakers would "lose some of the privileges they now enjoyed, for it could not be expected that a whole province would be allowed to remain exposed without defense when England was engaged in war." The opposition which had been shown by the Quaker majority in the assembly toward any plans for the security of Pennsylvania was, in his opinion, contrary to their principles. For, said the senior proprietor, one of these principles was an abhorrence of persecution; but there was no greater persecution "than to tie a man's hands so that his enemies may rob him." He then called the attention of the assembly to the fact that a number of people in Pennsylvania had petitioned the king⁴ for protection in case of invasion by the French. To prevent the passage of an act of parliament of the nature indicated, he therefore recommended the enactment of a law similar to one recently passed in the Lower Counties, which, for a "reasonable consideration paid for the use of the poor," exempted the Quakers from military service and from direct contributions for military purposes.⁵ But, as we have seen, the Quakers refused to accede to the demand for a compulsory militia law. Indeed, when a rumor that all Quakers would speedily be removed from office became current, they redoubled their efforts "to prevent

¹ Penn MSS., *Offic. Corresp.*, iii, Gov. Thomas to John Penn, November 5, 1739; to F. J. Paris, May 14, 1741.

² *Ibid.*, T. P. to Paris, March 27, 1741.

³ *Ibid.*, P. L. B., i, John Penn to T. P., December, 1740.

⁴ "To the Freeholders of the Province of Pennsylvania," 1743.

⁵ Penn MSS., P. L. B., i, John Penn to J. Kinsey, March 2, 1742.

churchmen and dissenters from being put into the assembly."¹ There is, however, some extenuation for the policy of the Quakers. "Were there a sufficient number of men of understanding, probity, and moderate principles proposed for our representatives, in whose resolution we could confide to preserve our liberties inviolate," said the Quarterly Meeting in Philadelphia in an address to the Meeting for Sufferings in London, May 5, 1755, "we should be well satisfied to have the members of our society relieved from the disagreeable contests and controversies to which we are now subjected. But, while arbitrary and oppressive measures are publicly avowed by those desiring to rule over us, * * * we must be faithful to our trust."² Although the Quakers, particularly the younger members of the sect, were fond of political power, still, as this address seems to indicate, they feared lest a diminution of that power might result in a corresponding increase in the formation of projects to violate their religious principles. Hence, they felt that, if even by their tacit acquiescence a compulsory militia should be established, not many years would elapse before their protests against other infringements on their religious opinions would be drowned in cries of inconsistency and partiality.

Early in 1755, when Gov. Morris and the assembly were disputing about the methods for raising supplies, the ministers informed the proprietors that, unless the Quakers acted a more "rational and dutiful part," they would not be allowed to "continue in stations to perplex the government."³ In fact the Board of Trade had under its consideration a bill to be introduced into parliament, one clause of which should forbid Quakers from sitting in the assembly of Pennsylvania.⁴ To avoid this stringent measure the Quakers in England sug-

¹ Penn MSS., *Offic. Corresp.*, iii, R. Peters to John Penn, April 4, 1741.

² *Ibid.*, *Phila. Land Grants*.

³ *Ibid.*, P. L. B., iv, T. P. to Peters, March 26, 1755.

⁴ *Ibid.*, to Morris, Feb. 14, 1756.

gested that parliament pass an act to dissolve the assembly which was then in session; when this should have been done, they would request the Quakers in Pennsylvania to withdraw from the assembly, at least until the close of the war. But the proprietors did not favor the scheme. They told the ministers that the Quakers in the province would not necessarily heed any requests or directions sent from the London Meeting for Sufferings. They suggested therefore that, by the use of some qualification which the Quakers could not take, the members of that sect in the province should be excluded from the assembly. But, since the Quakers in England were much respected, the ministers were unwilling to make them enemies by the use of a permanent disqualification. Indeed, the proposition was made that, in case the Quakers did leave the assembly, and those who had accused them of failure in duty should themselves fail to make suitable provision for the defense of the province,¹ parliament should pass a law for the establishment of a colonial militia, and levy a tax to defray the expenses of it.² By the militia law then in force in England, however, Quakers were individually exempted from service. It was therefore suggested that, if an act of similar character were passed in Pennsylvania, a certificate from the Meeting would be sufficient to designate the

¹ In a letter to Mr. Peters, May 25, 1758 (*Ibid.*, *Supp. Proc.*), Thomas Penn declared that, in his opinion, many persons who were averse to granting supplies for the service of the king sheltered themselves by laying all the blame on the Quakers.

² *Ibid.*, March 13, 1756. In 1745 Gov. Thomas had suggested the necessity of an act of parliament to determine the quota of men each colony should furnish for the service. *Ibid.*, P. L. B., ii, T. P. to Gov. Thomas, Feb. 2, 1746. In 1754 Gov. Hamilton wrote to Gov. De Lancey, of New York, "The progress of the French * * * will never be effectually opposed, but by means of an act of parliament compelling the colonies to contribute their respective quotas for that service, independent of assemblies, some of which * * * are either so ignorant as not to foresee danger at the smallest distance, or so obstinate as to pay no regard to it, but upon terms incompatible with all governments." Hazard, *Reg. of Pa.*, iv, p. 316. A similar opinion was expressed by Gov. Denny in 1757. *Pa. Arch.*, 1st series, iii, p. 106.

persons who were subject to exemption. But, as the proprietors pointed out, such a certificate might prove too great an encouragement to proselyting, and, by thus lessening the number of persons fit for service, lay too heavy a burden on the other inhabitants. For this reason they believed that the method of exemption by name would be wiser.¹ However, the ministers finally expressed themselves as satisfied with the proposition of the Quakers in England.² The request of the London Meeting had a suitable effect, for, in 1757, only a small proportion of the assembly was still composed of Quakers.³

Although the members of that sect did not again secure a position of prominence in the assembly till early in the following decade,⁴ their temporary departure from power made very little difference in the relations between that body and the governor. With the exception of the passage of two acts regulating the military forces which had been raised, the disputes concerning the issue of bills of credit, the taxation of the proprietary estates, the disposal of public money, and the validity of proprietary instructions, continued with unabated force. The history of these disputes has been traced in the preceding chapters. It need not here be mentioned further than to recall the fact that between November, 1755, and September, 1766, the assembly of Pennsylvania granted nearly £600,000 for military operations. This statement will serve to show that, after all, in the period of real emergency Pennsylvania was not lacking in the measures necessary for its welfare and security.

¹ Penn MSS., *Supp. Proc.*, T. P. to Peters, July 5, 1758.

² *Ibid.*, P. L. B., iv, T. P. to Morris, March 22, 1756; to Hockley, April 7, 1756.

³ *Votes*, iv, pp. 564, 626; *The Friend*, xlv, p. 162.

⁴ Penn MSS., *Supp. Proc.*, R. Peters to T. P., Jan. 13, 1761.

CHAPTER XIII

ROYAL OR PROPRIETARY GOVERNMENT

IN the introduction to this work we have observed that Pennsylvania was a huge fief held of the crown by the proprietors. In theory they were feudal lords. In fact they were the executives of a democracy. The two characters were incompatible with each other. The vesting of government and of the absolute ownership of land in the same individuals was inconsistent with the spirit of the age and the course of political development. This was the ultimate cause of all the struggles between the proprietors and the people, and even between the proprietors and the home government. With this fact in mind we can better understand the character of the efforts made to sever governmental powers from territorial rights, and to place the former where they properly belonged, namely, in the hands of the crown. In the previous chapter the attempts of the home government to accomplish this result have been discussed; now we are ready to consider how far the conflicts between the proprietors and the people tended toward the resumption of control by the crown.

Less than eighteen months after his return to England, William Penn determined to release himself from the cares of government.¹ The apparent causes which led him to take this

¹ About this time James Logan wrote to the proprietor: "I cannot advise thee against a bargain with the crown, if to be had on good terms for thyself and the people. Friends here, at least the generality of the best informed, think government at this time so ill fitted to their privileges that it renders them very indifferent on that point. Privileges, they believe, such as might be depended on for a continuance both to thee and them, with a moderate governor, would set thee much

step may be easily ascertained. In the first place, although his "holy experiment" had been a success, his own participation therein as its originator and promoter had not been fittingly recognized, nor his influence as the paternal head of the community satisfactorily maintained.¹ His financial embarrassments moreover opened before him the gloomy prospect of ruin. On the other hand the accusations against the province for its complicity in the violation of the navigation acts he saw furnished the home government with a strong argument in favor of its assuming direct control over Pennsylvania. Hence, in May, 1703, he proposed to the Board of Trade the surrender of his powers of government.² Among the conditions stipulated was a ratification of all the privileges he had given the colonists. But on the ground that, if the governments were purchased on such conditions, the crown would pay dearly for much trouble and little dominion, the Board refused to consider the proposition.³ Penn was then advised to add to his offer of the government the greater portion of the territory of Pennsylvania, and for both to ask £20,000. With this end in view he presented to the Board the draft of a new terri-

more at ease and give thee a happier life as proprietor—besides, that it would exempt them from the solicitude they are under, both from their own impotency and the watchfulness of enemies." Watson, *Annals of Phila.*, i, p. 43.

¹ "The error of William Penn," wrote James Logan in February, 1726 (Penn. MSS., *Offic. Corresp.*, i), "was in heaping things called privileges on a people who neither knew how to use them nor how to be grateful for them." Again, in November, 1729 (*Ibid.*, ii), Logan said: "He granted to his friends such privileges as might be suitable to those individuals at that time without considering strangers or what disposition his successors might make. He did not preserve the true balance between liberty and power." See Hazard, *Register of Pa.*, xv, p. 182.

² "I am actually in treaty with the ministers for my government, and so soon as it bears you shall be informed of it. I believe it repents some [in Pennsylvania] that they began it, for now it is I that press it upon pretty good terms." Watson, *Annals of Phila.*, ii, p. 43.

³ *Mem. Pa. Hist. Soc.*, iv, pt. ii, pp. 337-9; Chalmers, *Revolt of the American Colonies*, i, p. 380; *Penn and Logan Corresp.*, i, p. 163; *Passages from the Life of William Penn*, p. 480. See also Watson, *Annals of Phila.*, i, pp. 43-4.

torial charter, upon the granting of which he was willing to surrender his interests in Pennsylvania, subject, however, to the stipulations he had previously made.¹ But the Board again refused to enter into any negotiations. Thereupon the proprietor requested Isaac Norris to give him full information concerning the commerce of Pennsylvania, and its advantages to the crown.²

While engaged in incorporating this information into a new memorial to the Board, Penn was constantly urged to make every effort to rid himself of the government.³ Logan especially besought him to surrender his authority, as thereby his enemies would be punished and his financial troubles alleviated.⁴ At the same time he advised the proprietor that, in case no other method could be found, the surrender should be effected by an act of parliament.⁵ Moreover the friends of the proprietor felt it was to their advantage to have a change of government while he was yet in the possession of his faculties and capable of making conditions, rather than to leave it till his death or mental decay, when attempts might be made in various ways to exclude Quakers from control over the administration. They thought good terms should be obtained for those who in love and confidence ventured their lives and fortunes with him in settling Pennsylvania, and that care should be taken to guard against the extension

¹ *Mem. Pa. Hist. Soc.*, iv, pt. ii, pp. 352-4.

² *Penn and Logan Corresp.*, ii, p. 203.

³ In 1707 and 1709, Robert Quarry wrote to the Board of Trade that the assembly so opposed the proprietor that it would be advisable for him to give up his powers of government. *N. Y. Col. Doc.*, v, pp. 17, 116.

⁴ "When it is made to appear that, to thy ruin, thou hast been continually fighting the quarrels of the honest people here, and are turned upon and bit by the viperous spirit that poisons the bosom 'tis warmed by, a few recrements of the profession (Quakers) gathering other filth to them, and misleading some honest meaning men with false * * * pretenses, I say * * * I would proceed vigorously in the surrender." *Penn and Logan Corresp.*, ii, p. 190. See also pp. 119, 179, 182, 225, 227, 351; *Pa. Arch.*, 2d series, vii, p. 15.

⁵ *Penn and Logan Corresp.*, ii, p. 196.

of the power of the crown, the caprice of governors, and the payment of tithes. They believed also that, in addition to the usual privileges of Quakers, they should be allowed to serve on juries, to hold office, and to give testimony in all cases by the use of an affirmation in lieu of an oath.¹

To these requests Penn readily acceded, and incorporated the substance of them in his memorial. He called the attention of the Board of Trade to the fact that, "by his own personal interest, indefatigable industry and vast charge, and through many difficulties he [had] settled a considerable colony there, and improved a savage wilderness into a civilized and flourishing country." He asserted also that the attempts of the home government to take out of his hands the control of affairs in Pennsylvania had rendered him insecure in his possession thereof, and that the opposition and disappointment with which he had met induced him to surrender his powers of government. But he insisted that the Quakers should be protected in their civil and religious liberty. The Board desired to know what were the annual expenses of the government, the revenues by which they were defrayed, and for what length of time these revenues were granted. Penn replied that the expenses of government were less than those of any other colony, and declared that the assembly would readily grant duties on exports and imports which, together with the fines and forfeitures resulting from the punishment of illegal trade, would handsomely support a royal governor.²

After several reports on the subject had been made, on February 13, 1712, the Board recommended that the offer be accepted. It stated that such a proceeding would establish the authority of the crown more immediately over Pennsylva-

¹ *Penn and Logan Corresp.*, ii., pp. 348, 435-6; *Pa. Arch.*, 2d series, vii, pp. 28-30.

² Penn MSS., Ford *vs.* Penn; *Calendar of Treasury Papers*, 1714-1719, pp. 41-2; Chalmers, *Opinions of Eminent Lawyers*, i, p. 33.

nia, and that a more speedy and impartial administration of justice would thereby result. It believed that the acts of trade would be better enforced, and the people of the province better protected in their lives and property. As the nature of government did not admit of any method of valuation, the price to be paid and the profit to be purchased being the only pecuniary considerations, the Board left to "her majesty's grace and goodness" the amount to be paid, which, however, was to be looked upon as a bounty, not as a bargain. It suggested also that the surrender of the government of both the province and the Lower Counties should be unconditional. Although Penn demanded £20,000, the amount was fixed at £12,000, of which he received £1,000 on account.¹ But a bill, ordered by the queen in council to be introduced into the House of Commons, to confirm the sale was opposed by the mortgagees of the province,² and the ministers were too much busied in public affairs to pay much attention to anything that did not affect their own continuance in power.³ In 1719 it was suggested that an account should be drawn up of all the revenues of the province, which might be made use of whenever the ministers were again consulted with reference to the completion of the contract.⁴ When, however, the proprietors saw that, in spite of its action with regard to the Carolinas in 1729, there was no probability that the crown would insist upon the fulfillment of the contract, they determined to keep the government in their own hands.⁵ No further efforts, therefore, were made to surrender it voluntarily.

¹ Penn MSS., *Ford vs. Penn*, and *Offic. Corresp.*, i; Chalmers, *Opinions of Eminent Lawyers*, i, pp. 32-33.

² *Calendar of Treasury Papers*, 1714-1719, pp. 41-2. Chalmers, *Opinions*, etc., i, pp. 351-2.

³ Chalmers, *Revolt of the American Colonies*, i. p. 381.

⁴ *Pa. Arch.*, 2d series, vii, p. 65. For further negotiations relative to the sale of the government see *Calendar of Treasury Papers*, 1720-1728, pp. 14, 55-6, 393.

⁵ In making this resolution the proprietors were influenced by Logan, who declared that not only were the people at that time strongly opposed to the sale of

Let us now see what efforts were made by the people to accomplish the same result, though contrary to the wishes of the proprietors. In order to understand what were the political parties in the province it will be necessary to notice briefly the character and distribution of the population. The liberal offers of land and the promise of religious freedom furnished great incentives to immigration. Most of the immigrants were members of German religious sects,¹ such as the Moravians, Mennonists, Dunkards, and Schwenckfelders, who at first settled in the vicinity of Philadelphia and founded Germantown.² Gradually they established settlements at various points, particularly in the eastern part of the province. By 1755 it was estimated that out of 220,000, the entire population of Pennsylvania, 100,000 were of foreign birth, and of these the great majority were of German parentage.³ Indeed for some time grave fears were entertained lest the Germans who, especially in the frontier counties, were ignorant of both the English language and the constitution of the province, might become powerful enough to overthrow the government.⁴ But these fears proved groundless,⁵ for as a rule the conduct of the Germans was quite satisfactory.

the government to the crown, but, even granting that a royal governor were instructed to guard against encroachments on their territorial rights, little advantage could be gained from this fact, for cases involving disputes about land would have to be tried before a jury, which, in Logan's opinion, might be productive of partiality, if not of positive injustice. Penn MSS., *Offic. Corresp.*, i, J. Logan to John Penn, Nov. 24, 1725; ii, Nov. 17, 1729; to the proprietors, Nov. 14, 1731.

¹ Proud, *Hist. of Pa.*, ii, pp. 341-55.

² See *Pa. Mag. Hist.*, iv, p. 1 *et seq.*

³ *N. Y. Col. Doc.*, vi, p. 993.

⁴ Watson, *Annals of Phila.*, i, pp. 472-4. See also Löher, *Geschichte und Zustände der Deutschen in Amerika*, p. 194.

⁵ The proprietors believed that the fears of the Germans overturning the government were without real foundation; but they cautioned their officers to discourage any criticism of the Germans by pamphlets or otherwise, unless good provocation therefor could be shown. Penn. MSS., P. L. B., iii, T. P. to Peters, July 17, 1752; iv, Feb. 21, 1755.

As the eighteenth century progressed, another class of immigrants appeared. This class was composed of Scotch-Irish Presbyterians, who settled principally in Lancaster, York and Cumberland counties.¹ They were a hardy, thrifty people who speedily became inured to frontier life, and whose impatience of control early made itself known.² Because in time of war they strenuously insisted upon defending the province by force of arms against the French and Indians, they became exceedingly disagreeable to the Quakers. But, aside from their religious differences, there was a natural antipathy between these rough backwoodsmen and the highly cultured Quakers. The latter lived in Philadelphia and the adjoining counties. By reason of their birth and education they regarded themselves as the superiors of their rough opponents, and exerted every effort to maintain their political supremacy. To this end they resisted all attempts to secure at least proportionate representation in the assembly.³ The three old counties, Phila-

¹ *Pa. Mag. Hist.*, x, p. 285.

² Watson, *Annals of Phila.*, i, pp. 477-8.

³ Soon after the population on the frontier counties began to exceed that of Philadelphia, Bucks and Chester, the demands, particularly of the Scotch-Irish, for an increase in representation were answered by petitions to the assembly requesting that additional members should be admitted from the older counties. *Votes*, iv, p. 211. The chief complaint of the frontiersmen of course was, that the Quakers, by continuing to sit in the assembly and by refusing to allow them an equitable representation, prevented military operations from being undertaken. In their contention, moreover, they were strongly supported by the proprietors. P. L. B., iv, T. P. to Morris and Peters, March 22, 1756; v, to Chew, Dec. 12, 1757. On another subject, too, the frontiersmen and the Quakers disagreed, and that was the Indian relations. The former had an intense dread and hatred of the savages, while the latter were always kindly disposed toward them. The frontiersmen felt it to be their duty, like Joshua of old, to slaughter the heathen. Indeed, Indian atrocities had made them in turn so ferocious that the murder of a savage, innocent or guilty, was usually believed to be justifiable, and rarely would a jury in the outlying counties condemn any one for the perpetration of such a crime. This hatred of the Indians led to a serious outbreak in 1764. It seems that since early in the century a number of more or less Christianized Indians had been colonized on Conestogoe manor. In 1730 a band of Scotch-Irish immigrants

delphia, Bucks, and Chester, and the city of Philadelphia, had altogether twenty-six representatives in the assembly, while all the other counties, though representing a much larger popula-

forcibly appropriated the 15,000 acres in the manor, declaring that "it was against the laws of God and nature that so much land should remain idle while so many Christians wanted it to labor on and raise their bread." But the sheriff with a posse ejected them and burnt their cabins. Watson, *Annals of Phila.*, i, pp. 452, 478. They did not forget this fact, and in December, 1763, a party of ruffians from Paxton and Donegal townships descended upon the little settlement of Indians, and mercilessly slaughtered a number of men, women and children. The majority of the Indians, however, were away at the time of the attack, and were later placed in the jail at Lancaster under the protection of the magistrates. But the ruffians broke down the doors, butchered all the miserable wretches they found cowering within, and rode off unharmed. Upon the news of this proceeding the Moravian Indians were removed to a place near Philadelphia. Frightened at the possibility of their own destruction, they petitioned the assembly to send them to England. This being impracticable, an attempt was made to send them to New York, where they might put themselves under the protection of Sir William Johnson. The governor and council of that province, however, refused to allow them to enter. Hence they were locked up in the barracks at Philadelphia. The news that a number of their hated foes were apparently within easy reach prompted a mob of several hundred men, bound by an oath and compact, to advance on Philadelphia with the sworn purpose of destroying the Indians, and, if necessary, even the Quakers themselves. The city was in consternation. Pamphlets were issued and spread broadcast throughout the streets, some defending the action of the ruffians, others denouncing their inhumanity. The assembly passed the riot act. At the request of Gov. Penn, moreover, a military association under Franklin was formed. As the "Paxton Boys" neared Philadelphia many of the Quakers, particularly the younger members of that sect, became terror-stricken. A number of them shouldered muskets and hastened to the place of muster, or lent vigorous efforts toward building fortifications. *Stillé, Life and Writings of John Dickinson*, i, pp. 352-3; *Coll. Pa. Hist. Soc.*, i, no. 2, pp. 73-7; Hazard, *Register of Pa.*, xii, pp. 9-12; Watson, *Annals of Phila.*, i, pp. 452-3; *Letter from a Gentleman in one of the Back Counties to His Friend in Philadelphia; The Quaker Unmasked*. Learning that extensive preparations to repulse them had been made, and that, if necessary, the king's troops would be called into requisition, the rioters halted at Germantown, and sent to the assembly a message recounting their grievances, demanding the enactment of a compulsory militia law, and calling for a proportionate representation. A committee of the council and several influential men, among whom was Franklin, went to Germantown, and after considerable discussion, the "Paxton Boys" were persuaded to return home. The assembly then prepared a bill to apprehend the murderers of the Indians. But

tion,¹ were permitted to elect not quite half that number. It is true that the charter of privileges of 1701 provided that the assembly should consist of four persons from each county, and that, whenever the separation of the province from the Lower Counties took place, Philadelphia, Chester, and Bucks counties should be entitled to double their representation. But there is no evidence that William Penn intended thereby to exclude from the same representation other counties which might be formed. The Quakers, however, were too fond of power² to give to the charter anything but the narrowest construction.

this action occasioned so much bitterness within and without the house that it had to be abandoned, for no officer would dare to incur the enmity of the rioters and their sympathizers. *Ibid.*; Hazard, *Register of Pa.*, vi, pp. 297, 358; vii, p. 255; ix, pp. 114-15; Rupp, *History of Lancaster County*, pp. 356-66; Mombert, *Authentic History of Lancaster County*, pp. 180-96; Franklin, *Works*, vii, p. 293; Gordon, *Hist. of Pa.*, 405-10; *Shippen Papers*, p. 204; *Votes*, v, pp. 311-319; *Col. Rec.*, ix, pp. 100-148; *Pa. Arch.*, 1st series, iv, pp. 151-156; Penn MSS., *Offic. Corresp.*, T. P. to John Penn, March 17, 1764, and v. v. June 16 and Sept. 1, 1764; *The Plain Dealer, or a Few Remarks upon Quaker Politics; A Looking Glass for Presbyterians; A Serious Address to such of the Inhabitants of Pennsylvania as have connived at or do approve of the Late Massacre of the Indians at Lancaster; An Historical Account of the Late Disturbance between the Inhabitants of the Back Settlements of Pennsylvania and the Philadelphians*, etc., etc. See Hildeburn, *Issues of the Pennsylvania Press*, ii, pp. 5-29. A short time later a petition was sent from Cumberland county, which complained that, although the people of that and of other sections of the frontier had no desire to meddle with the principles of others, they "suffered by the influence of those (Quaker) principles which were prejudicial to the province in general and oppressive to them." They believed also that the "design and letter of the charter, the right of British subjects, reason and common sense," demanded a more equitable representation for the frontier counties. The petition was promptly tabled. *Votes*, v, pp. 332-3, 340. But in 1770 a concession was made whereby the representation of Berks and Northampton counties was slightly increased. *Ibid.*, vi, pp. 212-13.

¹ *Pa. Mag. Hist.*, x, p. 287.

² "That wealthy and powerful body of people who have ever since the war governed our elections, and filled almost every seat in our assembly." Franklin, *Plain Truth*, 1747. "The Quakers are not a majority in the province, but by their union they have a great influence in public affairs." Gov. Thomas to the Board of Trade, Oct. 20, 1740. The Quakers even went so far as to make up their party ticket at their yearly religious meetings. *Shippen Papers*, p. 64.

Opposed to the Quakers, moreover, were the Episcopalians, the majority of whom lived in Philadelphia, and who with the Quakers formed the bulk of the aristocracy. Differences in religion led also to strained social and political relations. All these facts will serve to show what was the composition of the two great political parties, the proprietary or Presbyterian, and the anti-proprietary or Quaker, as they were usually called.¹ To the former belonged the Episcopalians and most of the Presbyterians,² not because they had any particular regard for the proprietors personally, but because they held religious and political views with which the Penns were more or less in sympathy. To the latter, ever after the days of David Lloyd, belonged by far the greater number of Quakers. Owing to their fear of compulsory military service the Germans, whose religious opinions were similar to those of the Quakers, were also found generally on the anti-proprietary side, or against the "governor's men," as they called the members of that party,³ but skilful manœuvring on the part of the proprietary adherents occasionally brought about a different state of affairs.

For a number of years after the founding of Pennsylvania the Quaker element in the community was largely preponderant. The Episcopalians did not make their presence felt till about 1700, when a church of that denomination was established in Philadelphia. About this time, also, we have seen that, on account of the accusations against the province, the Episcopalians came out boldly in favor of royal government. When the Quakers in the assembly refused to allow money to be appropriated or a militia to be established for the defense of the province against the French, and insisted that an affirmation should have the force of an oath, the churchmen declared that no matter if the Quakers did want a government without the use of arms and of oaths, they themselves felt con-

¹ Penn MSS., P. L. B., viii, T. P. to John Penn, Dec. 14, 1765.

² *Ibid.*, T. P. to Allen, Nov. 10 and Dec. 8, 1764.

³ Watson, *Annals of Phila.*, i, p. 474.

scientiously bound to protect their lives and property by force against open violence, and by oaths against insidious fraud.¹ Every little cause for offense they were careful to exaggerate as much as possible in England. In the hope also that the resulting confusion would hasten the proposed royal government, they delayed the accession of Andrew Hamilton as governor in 1702, embarrassed his administration in the Lower Counties, and fomented disputes between him and the assembly. On the other hand, in June, 1707, the Quakers themselves threatened Penn that, unless he dismissed from office Logan, who was, of course, the chief obstacle in the way of David Lloyd's ambition, and redressed a number of other grievances, the assembly would apply to the crown for these favors.²

As the actual authority of the proprietor weakened, the growing power of the assembly caused a suggestion, made a few years after his death, that the crown should assume the government to be received with unqualified aversion, the Quakers asserting that such a step would be inconsistent with the promises Penn had made to the first colonists.³ But when the dispute about paper money was in progress, Sir William Keith, the ex-governor, declared that, if Gov. Gordon did not make satisfactory concessions to the advocates of the currency, he and his partisans would endeavor to prevent the assembly from granting any supplies. It was hoped that this would force Gordon to give up his position and return to England.⁴ Then the proprietors might be put to so much trouble to appoint another governor that they would be compelled to surrender the government to the crown, at which time Keith might offer

¹ Cf., *Penn and Logan Corresp.*, ii, pp. 430-431.

² *Votes*, i, pt. ii, p. 182.

³ Penn MSS., *Offic. Corresp.*, i, J. Logan to John Penn, Feb. 11 and Nov. 24, 1725.

⁴ *Ibid.*, ii, Barclay to T. P., Oct. 27, 1728; Gordon to John Penn, May 16 and Oct. 6, 1728.

his services as the king's representative. In fact Keith, in 1728, sent to the king a paper showing how injurious to his majesty's interest were all proprietary governments;¹ but the schemes of himself and partisans came to nothing.

As soon as the young proprietors took charge of the government the Episcopalians noticed that not much cordiality existed between the Quakers and the sons of William Penn, and, owing to their dislike for the former, most of them, as has been stated, espoused the cause of the latter. Their allegiance to the Penns, of course, became all the stronger after the death of John Penn, the only proprietor at all consistent in his Quaker principles. On the other hand, the dissatisfaction of the Quakers with the proprietors was deep-rooted, and took on additional strength as the conflicts between the governor and the assembly continued.² In 1741 it was evident that the enemies of the proprietors were endeavoring to place the government in the hands of the king. Especially was this the case when the opinion of the governor concerning the granting of supplies, and the establishment of a militia, was found to differ from that of the majority of the assembly. A few Quakers declared that a royal government might be oppressive to the sect. They were answered by the statement that Quakers were allowed to sit in both the council and assembly of New Jersey. On this point, however, it may be said that in New Jersey the Quakers were a small minority, while in Pennsylvania they stubbornly held fast to their political control.³ Indeed it became a common practice for the Quakers and their sympathizers to say that the proprietors were merely private individuals, and when any carefully concocted political

¹ Burk, *History of Virginia*, iii, p. 144, *et seq.*; *Votes*, iii, pp. 55-56. In 1717 Keith wrote to the Board of Trade that he hoped the home government would assume jurisdiction over Pennsylvania. *Mem. Pa. Hist. Soc.*, iv, pt. ii, p. 383.

² Penn MSS., *Offic. Corresp.*, ii, J. Logan to the proprietors, April 30, 1729; iii, Gov. Thomas to John Penn, June 4 and Nov. 5, 1739, March 1, 1740.

³ *Ibid.*, iii, T. P. to F. J. Paris, March 27 and April 24, 1741.

schemes were balked, to threaten to petition the king to assume the government. The first petition of this character appears to have been sent in 1742, but the Board of Trade reported against it.¹

Again in 1751, when the proprietors were requested to contribute to Indian expenses, their answer was printed at length in the journal of the assembly, two years later, with a running commentary written by a committee of which Franklin was the most active member. In this it was asserted that for several years the proprietors had had no "formidable share of the people's love and esteem." The Penns, it was also said, were represented by the governor who ought to be empowered to pass all laws necessary for the welfare of the province; but, before the assembly could secure the passage of such acts, money for which they as proprietors were more properly responsible must be paid, or some other concession made to suit their particular interest. As the assembly, said the committee, had an undoubted right to the acts it presented to the governor for his approval, it would be able to obtain them "from the goodness" of the crown "without going to market for them to a subject." In reply to the proprietors' reminder of the deference due to their position, the committee declared that the crown had given the assembly as well a rank which it held not by hereditary descent, but as it was the "voluntary choice of a free people, unbribed and even unsolicited." The request of the proprietors, further, that the assembly would be satisfied with the opinion of the governor alone on its measures, the committee criticised as a denial of the right of appeal. "No king of England," said the committee, "has ever taken on himself such state as to refuse personal applications from the meanest of his subjects, where the redress of a grievance could not be obtained of his officers. * * * Are the proprie-

¹ Penn MSS., *Offic. Corresp.*, iii, T. P. to F. J. Paris, April 24, 1741; Gov. Thomas to John Penn, June 4, 1742; W. Allen to T. P., July 8 and Nov. 20, 1742, Oct. 3, 1743; *Ibid.*, P. L. B., i, John Penn to Gov. Thomas, Aug. 16, 1742.

taries of Pennsylvania become too great to be addressed by the representatives of the freemen of their province? If they must not be reasoned with because they have given instructions, nor their deputy because he has received them, our meetings and deliberations are henceforth useless; we have only to know their will and to obey." * * * If this province, concluded the committee, "must be at more than £2,000 a year expense to support a proprietary's deputy who shall not be at liberty to use his own judgment in passing laws, * * * but the assent must be obtained from chief governors at three thousand miles distance, often ignorant or misinformed of our affairs, and who will not be applied to or reasoned with when they have given instructions, we cannot but esteem those colonies that are under the immediate care of the crown, in a much more eligible situation; and our sincere regard for the memory of our first proprietor must make us apprehend for his children that, if they follow the advice of Rehoboam's counsellors, they will like him absolutely lose—at least the affection of their people, a loss which, however they affect to despise, will be found of more consequence to them than they seem at present to be aware of."¹

It is thus evident that the assembly, by threatening to make the force of instructions to the governor the basis of petitions to the crown with regard to the civil and religious liberties of the people, was trying to wrest the government from the hands of the proprietors. Indeed, the policy of Franklin in sending, independently of the governor and even without his knowledge, arms and ammunition into the country districts, as well as presents to friendly Indians, caused many of the people to look for protection rather to the assembly than to the governor. Election harangues were printed and circulated, and the belief steadily gained ground that a change of government was necessary. In fact, such a bitter spirit against the proprietors existed, that all sorts of associations were formed to

¹ *Votes*, iv, pp. 362-7.

oppose them.¹ The proprietors, however, well informed by their friends of the existing state of affairs, were often requested by them to ask the ministry to check, if possible, the angry tirades against the government. The proprietary adherents claimed that the various statements of grievances were intended solely to blind and irritate the people, "who were only too ready to hearken to calumny directed against superiors, hoping thereby to bring all to a level with themselves." Every officer, they declared, who held a commission from the proprietors was regarded with hatred and aversion, and any attempt to exercise the repressive power of the government was met with menacing movements toward insurrection.²

In 1756, when the assembly was unable to tax the estates of the proprietors, it bitterly inveighed against the use of instructions, and lamented its unhappy situation, in that it was forced to enact a law against its better judgment. Still it asserted its confidence in the justice of the king and parliament, and that they would destroy the tyranny of the proprietors, which had so long violated the constitution and liberties of the province. To this end it purposed to make an immediate application to his majesty. But Gov. Denny advised it first to grant supplies in a manner conformable to his instructions, and then to lay before the king in council any grievances it might have.³

¹ In 1753, Gov. Hamilton declared that, as he could find very few persons of ability and integrity who would dare to support him, and, as the slightest misstep was sharply censured, he found it needful to consult a lawyer on his governmental policy. Penn MSS., *Offic. Corresp.*, vi, J. Hamilton to T. P., July 7, 1753. This lawyer, however, was not the attorney-general of the province, for that officer asserted that, as the proprietors withheld compensation, which he claimed was due him for services rendered, they ought to be burnt in effigy in every square in town. *Ibid.*, *Corresp. of the Penn Family*, R. Hockley to T. P., Aug. 22 and 25, 1755.

² *Ibid.*, *Corresp. of the Penn Family*, R. Peters to R. Hockley, Dec. 19, 1755; R. Hockley to the proprietors, Oct. 1, 1754, Oct. 25, Nov. 23, and Dec. 18, 1755, Feb. 23 and June 3, 1756.

³ *Ibid.*, *Offic. Corresp.*, viii, R. Peters to T. P., Sept. 4, 1756; *Votes*, iv, pp. 603-612.

No further outbreak of prominence appeared till January, 1764, when a member of the assembly complained that they wore "that servile piece of furniture called a neck yoke," and had their "necks under the tyrant's foot" * * * till it should please their "gracious sovereign to interpose, and take the government out of the hands of the proprietaries," * * * which was the wish of every one who retained a "just sense of freedom."¹ Two months later, when the assembly presented to Gov. John Penn the bill for the issue of £55,000 in bills of credit, as well as a bill for the establishment of a militia to defend the province against the Indians, it appointed at the same time a committee, of which Franklin was chairman, to draw up resolutions concerning the circumstances of the province, and the grievances of the people. The refusal of the governor to assent to the bills as drawn called forth a wrathful protest from the assembly. It concluded with these words: "If any ill consequences ensue from the delay, they will undoubtedly add to that load of obloquy and guilt the proprietary family is already burdened with, and bring their government—a government which is always meanly making use of public distress to extort something from the people for its own private advantage—into, if possible, still greater contempt. For our own parts we consider the artifices now using and the steps taking to inflame the minds of unthinking people and excite tumults against the assembly as concerted with a view to awe us into proprietary measures. * * * And, * * * since the governor will not pass the * * * militia bill * * * but upon terms of great addition to proprietary power, * * * we must for the present depend upon ourselves and our friends, and on such protection as the king's troops can afford us, * * * till his majesty shall graciously think fit to take this distracted province under his immediate care and protection."² Then the committee, March 24, 1764, presented to the assembly a series of twenty-six resolutions in which the grievances

¹ *Pa. Mag. Hist.*, v, p. 69.

² *Votes* v, 336-7.

originating from the tyranny of the proprietors were thoroughly rehearsed. It was stated that all the misfortunes experienced by the province were due in some way to the proprietors, and that the conduct of the assembly in granting supplies for the service of the king had been grossly misrepresented by them. Instructions were also bitterly denounced. The proprietors were declared to be private individuals, who, when they had appointed their deputy, had absolutely no powers of government. They had held large tracts of land for speculative purposes, greatly to the impoverishment of the province. To exempt any of their estates from taxation was "dishonorable, unjust, tyrannical and inhuman." The power claimed by the governor over the militia, as *e. g.*, the right to appoint officers and by them to hold courts martial, however safe it might be in the hands of a royal governor, would be an addition to the present powers of the proprietors which could not safely be entrusted by the people to their keeping. The assembly had long shown an affectionate regard for the proprietary family, and the deputy governors had received from it in forty years nearly £80,000. In return the proprietors had endeavored to "diminish and annihilate the privileges granted by their honorable father."¹ The resolutions also stated that, as the immense territorial and governmental powers of the proprietors would be dangerous both to the prerogatives of the crown and to the liberties of the people, and that, as "it was high presumption in any subject to interfere between the crown and the people," the powers of government ought to be exercised directly by the crown. Therefore, since "all hope of any degree of happiness under the proprietary government" was at an end, it was re-

¹ The anti-proprietary party further characterized the proprietors as monsters of arbitrary power, "swelled to an enormous size by the possession of immense wealth, and perpetually stimulated to acts of oppression by the most sordid avarice, * * * preying upon the vitals of that excellent and salutary constitution of government established by their father." *Pa. Mag. Hist.*, v, p. 73.

solved that an address should be drawn and sent to the king.¹ The assembly then agreed to adjourn in order to consult its constituents on the advisability of petitioning his majesty to assume direct jurisdiction over Pennsylvania, either by fulfilling the contract made with William Penn for the sale of the government, or otherwise "as to his wisdom and goodness" might seem best. Before any definite action was taken, however, Isaac Norris, the aged speaker of the assembly, resigned. He pleaded poor health, as an excuse, but it is probable that his unwillingness to venture so far was his real reason. His place was taken by Franklin.

The publication of these resolutions in Franklin's paper, "The Pennsylvania Gazette,"² started a bitter factional struggle. The anti-proprietary party headed by Franklin and Joseph Galloway, a prominent lawyer and member of the assembly, worked assiduously, haranguing the people on the necessity of shaking off the chains of proprietary injustice and slavery, and making strenuous efforts to secure signatures to petitions praying the king to take the province under his benign protection. On the other hand the proprietary party, headed by Rev. Dr.

¹ *Votes*, v, p. 337 *et seq.*

² In a pamphlet entitled, "Explanatory Remarks on the Assembly's Resolves published in the Pennsylvania Gazette, No. 1840," is the following powerful appeal to excite the jealousy of the crown: "Power united with great wealth is all that is necessary to make its possessor absolute, and great riches in a private person are dangerous to the prerogatives of the crown. It enables him to form too great a number of dependents—much greater than is consistent with the safety of either. They place the subject too near a level with his sovereign. They form in the mind ambitious designs, and not only give the hope but create the power of carrying them into execution. * * * If this be the case of great wealth alone, how much more must the addition of all the powers of government in the same persons, three thousand miles distant from the eye of the sovereign, render the rights of the crown and the privileges of the people precarious and at the disposal of the proprietaries?" The people were therefore requested to inform their representatives whether they had rather submit to the unjust proprietary instructions, "subversive and effectually destructive of their essential privileges, and of course become slaves to the usurped and arbitrary power of private subjects," or "implore the immediate protection" of the crown.

William Smith, Richard Peters, Benjamin Chew, William Allen, Richard Hockley, and other prominent officers and friends of the proprietors, strove just as earnestly to turn the current of popular opinion in their favor; while John Dickinson, who, however, was no friend of the Penn family, by his endeavors to maintain a conservative policy, proved to be an important ally of the proprietary cause. The proprietary party also prepared and distributed pamphlets and petitions denouncing the resolutions,¹ and requesting the proprietors to represent in behalf of the people of Pennsylvania, that the present constitution of the province, as based on the charter of privileges, was a sacred inheritance, and that the action of the assembly was contrary to the charter and unauthorized by the people.*

Immediately after its resumption of sessions, the assembly appointed a committee to prepare the address which was to

¹ The following is an extract from a pamphlet of the proprietary party, entitled, "The Plain Dealer, or A Few Remarks upon Quaker Politics:" "The proprietaries are no more. By twenty-six very decent and very modest resolves of the house, you conceive them as dead as Harry the Eighth. So the helm must be clapped hard at lee, and we shall be about in a jerk. Nothing else than a king's government will now suit the stomach of a Quaker politician. Not that you all love his majesty, for some of you would not willingly give sixpence to support his cause. * * * We are all this time taking it for granted that the proprietaries are to be kicked off the stage, but let us see what has been their fault. They desire that their located uncultivated lands be taxed at 5 %. There was a decree for this purpose of the king in council, and approved of by the agents. Suppose that the proprietaries have done wrong in selling their lands too dear, or in reserving some of the best to themselves. How will the matter be mended by getting a king's governor? Shall we force the proprietaries to take up more land, or sell their property at whatever price we choose to give, or prevent them from letting their friends have land, or force them to refund the £80,000 we gave to their governors, or refund the thousands Denny received as bribes? The king will judge loyalty according to substantial proofs in time of danger, not idle talk. * * * The proprietaries are the governors under the king, and they nominate a lieutenant governor. Even in a king's government we must expect to have a governor whom somebody has recommended to his majesty. My Lord Somebody has a friend, who has a cousin who needs a place, or stands in somebody's way, and so we may come by a governor."

² Penn MSS., *Autograph Petitions*.

accompany a number of private petitions to the king for a change of government. This committee of eight was headed by Franklin and Galloway. Several members of the assembly, among whom was Dickinson, moved an adjournment for further consideration of the matter. Failing in this, they desired to have their protest against the action of the assembly entered on the minutes. This request also was denied,¹ and the address, as submitted by the committee, was sent with the petitions to the agents of the province, to be laid before the king.

While the address was in preparation four pamphlets containing speeches supposed to have been delivered by Dickinson and Galloway in the assembly, May 24, 1764, were distributed among the people. Those of the former were prefaced by Rev. Dr. Smith, and those of the latter by Franklin.² They are worthy of some examination. In the case of Dickinson they show the views of a man who, as already observed, was not friendly toward the proprietors,³ but who saw that the growth of the democratic spirit would be aided by a continuance of the proprietary system.⁴ In the case of Galloway, conversely, we see the opinions of an able lawyer, a thorough sympathizer with the interests of England, and an advocate of the progress of democracy, but only to the extent of opposing

¹ *Votes*, v, p. 349.

² See Franklin's "Cool Thoughts on the Present Situation of Our Public Affairs," *Works*, iv, p. 78.

³ "Mr. Dickinson's speech no doubt opened the eyes of many people, and the more as he did not appear by it to pay any regard to us, but confined himself to the only point for the people to consider, whether they would be most happy under the one or the other government." Penn MSS., P. L. B., viii, T. P. to Smith, Feb. 15, 1765. "Cultivate the good disposition of Mr. Dickinson," wrote Thomas Penn to Mr. Chew, Dec. 7, 1764 (*Ibid.*), "as we have not so great a number of men able to assist government that we can afford to lose the help of any one."

⁴ Thomas Penn, writing to Gov. Penn, June 8, 1765, said, "Lord Hillsborough says that you should write to the ministers on any extraordinary occasion. But whenever you do, don't say a word of the weakness of government, but that you have taken every legal method to do the business." *Ibid.*

the proprietors, not of interfering with the supremacy of the crown. Dickinson acknowledged that strict adherence to proprietary instructions was inconvenient, and that to show loyalty and affection to the king without indulging the proprietors by a partial method of taxation was almost impossible. But, since effects might be produced that would be worse than the injuries already received, he thought resentment should be proportional to the actual provocation given. If the change from proprietary to royal government could be brought about without the violation of any rights the people at present enjoyed, such a course of action might be wise; but, "in the blaze of royal authority," too much would be paid for a slight addition to the taxation of the proprietary estates. Since the province, moreover, by reason of its conduct during the recent war, as portrayed in the letters of the secretary of state, was under the ban of royal and ministerial displeasure, such a movement would be ill-judged. Especially would this be true were it known that the application for a change of government came from the assembly after it had refused to grant supplies, and because the governor had adhered to the amendments made by the Board of Trade to the tax bill of 1759, and the stipulations agreed to by the agents, Franklin and Charles. For the assembly to insert in its address to the crown, "We will not allege this dispute with the governor on the stipulations, but the general inconveniences of proprietary government," was therefore a piece of artifice, as the messages to the governor distinctly showed. All these reasons led Dickinson to urge that, since innovations in government should be duly considered, and the consequences thereof carefully weighed, a proper time and a proper method for attempting them were absolutely necessary. The influence of the proprietors, he thought, was so great that they could either prevent a change of government, or make it on terms which would enable the ministers to carry out any designs they might have on the liberties of the people. The prejudice of the ministers might

wear off. Hence to make an application to the crown at that time was clearly injudicious. Furthermore, Dickinson declared that the real cause of a desire for a change of government was anger against the proprietors or weariness of constant contention, rather than "reverence to his majesty from an appreciative sense of paternal goodness." The people of Pennsylvania did not now obey the royal commands, yet they were trying to place themselves more directly under royal control. If they faintly asked for the preservation of their privileges, a petition would be of no consequence to the king, and would betray the liberties of the province; but, if they insisted on the preservation of their privileges, a petition of that character, which asks a favor and then prescribes the method of granting it, would be unprecedented. They must either "renounce the laws and liberties of their ancestors, or submit without conditions to the protection of the king." He asserted also that, as the assembly had not been elected for the express purpose of changing the government, it could not do so without the consent of its constituency. The majority of the people, said he, did not sign the petitions against the proprietors.¹ Because the proposed address of the assembly, further, had depicted Pennsylvania as a scene of confusion and anarchy, Dickinson declared, "that it was scarcely becoming to disclose to the king and ministry the folly and crimes of countrymen," for an Eng-

¹ In the Penn MSS., *Autograph Petitions*, are preserved a large number of petitions containing in all 2,100 names, and protesting against royal government. Furthermore, the proprietors received from the province petitions the aggregate of the signatures of which amounted to upwards of 10,000 (P. L. B., viii, T. P. to Chew, Dec. 7, 1764; to Shippen, April 10, 1765). Among these petitions was one from the corporation of Philadelphia (Hazard, *Register of Pa.*, ii, p. 190; *Minutes of the Common Council*, pp. 704-5; P. L. B., viii, T. P. to John Penn, Dec. 7, 1764), and another from the assembly of the Lower Counties (P. L. B., viii, T. P. to Chew, Jan. 11, 1765). See also *Votes*, v, pp. 382-3. As very few of the petitions in favor of the immediate jurisdiction of the king are known to be extant, it is probable that the real purpose of the demonstration against the proprietors was rather to frighten them into agreement with the wishes of the assembly, than to alter the existing form of government.

lish army might be established in the province. He suggested, therefore, as the wisest plan, that the matters in dispute between the assembly and the proprietors should be left to the decision of the king, and thought that his decision, accepted by both parties, would conduce far more to the real welfare of the province than a purely royal government could do.¹

In reply Galloway entered upon a formal refutation of the statements of Dickinson. He described at length how the proprietors had destroyed the rights and privileges of the people, and declared that the only remedy was immediate recourse to the crown. He denied that the proprietors had any influence with the Privy Council. He thought the ministry would be too cautious to awaken opposition "by restraining a free people from the exercise of their just liberties," and he criticised Dickinson's portrayal of the ministry as irreverent and disrespectful to the king. He then proceeded to dilate on the virtues of that monarch, his tenderness, his willingness to redress all grievances, and his abhorrence of any designs to deprive the people of their rights. He believed that, since the increasing power of the proprietors, caused by their possession of both the government and vast territorial domains, gave them greater opportunity for doing evil, the liberties of Pennsylvania would not improbably be sacrificed to proprietary injustice and ambition. He asserted that all obstructions to the king's service and to the welfare of the people were due to proprietary instructions, which violated the royal charter and subverted the rights of the legislature, whereas the assembly had always obeyed the wishes of the crown. He declared further that, as the prejudice of the ministry against the province was due entirely to the misrepresentations of the proprietors, the present was the best time to remove it. The growth of vice and crime, and the lack of a military force adequate to suppress tumult and insurrection, were in his opinion necessary characteristics of the proprietary system. The ad-

¹ "A Speech * * * by John Dickinson," etc., Philadelphia, 1764.

vantages of a royal government, he thought, were religious toleration, freedom from impediments to the king's service, proper protection against internal disorder, perfect administration of justice, and absence of the practice of granting indiscriminately licenses to keep taverns. For the crown to deprive the people of their just privileges would not only be an act of injustice and a violation of the royal faith, but the welfare of the English nation as a whole would be seriously affected. He judged, therefore, that such a proceeding would be impossible. Again, since the petition to the king related to grievances arising from the nature of government, and since the purpose in sending them was to secure the enjoyment of all privileges granted by the crown in 1681, freed from the inconveniences incident to proprietary government, he believed that under a royal government there was no danger that the charter of 1701 would be set aside. In fact he declared that, if the people lost all the privileges given by charter, and enjoyed only those possessed by their neighbors in the royal provinces, they would be better off than they then were. In reply to Dickinson's statement in regard to the powers of the assembly to alter the constitution, Galloway asserted that the consent of its constituents was not necessary for any changes in the government, and that the charter of 1701 expressly provided that amendments and alterations of the constitution should be made by six-sevenths of the assembly. But he was careful to ignore the fact that the charter also provided that, before any alterations of it could be effected, the consent of the governor, as well as that of six-sevenths of the assembly, must be obtained. He believed, moreover, that a representation of the confusion and insecurity to which the province was subject from the inhabitants of the frontier counties ought to be a source of joy, as its present safety was due to the king's troops. To establish a military force permanently in the province would therefore prove a great blessing. Finally, he stated that, as the contract of William Penn with the crown

was yet unfulfilled, an equitable right to the government was still vested in the crown, and might be sustained by a suit in chancery, and by paying the rest of the money.¹

Let us now see how the proprietors received the news of the attempts to supersede their government. They naturally looked upon Franklin as their greatest opponent, and endeavored to have him dismissed from the office of postmaster-general. "We are not in fear of your mighty Goliath," wrote Thomas Penn to James Hamilton, June 13, 1764,² "whose schemes of government are not approved of here, and who may lose the government of a post office by grasping at that of a province." Thereupon they complained to several of the ministers that Franklin, though an officer of the crown, was the leader of the opposition to their government. The secretary of state assured them that, unless Franklin very soon altered his conduct, he would not be allowed to retain his position.³ Not long after the proprietors were informed that respectable people did not favor Franklin.⁴ Thereupon they wrote to two prominent Presbyterian members of the proprietary party,⁵ "You may be assured we shall never consent to run the least hazard of depriving the good people of Pennsylvania of any of their privileges, nor of resigning the government of Pennsylvania at the motion of factious, vindictive men."

While the proprietors waited to see what further efforts their opponents would make, the elections of October, 1764, approached. The bitterness between the political parties became intensified. In reply to attacks and insinuations of the anti-proprietary faction, the friends of the proprietors declared that the whole scheme was intended to embarrass the government, so that the Quaker politicians might have a longer lease of power. Some hinted that certain deficiencies in the accounts of public money might be conveniently forgotten in the

¹ "The Speech of Joseph Galloway," etc., Philadelphia, 1764.

² P. L. B., viii.

³ *Ibid.*, T. P. to Chew, June 8, 1764.

⁴ *Ibid.*, T. P. to Smith, Aug. 10, 1764. ⁵ *Ibid.*, T. P. to Allison and Ewing.

confusion incident to a change of administration. Others urged Gov. Penn, when granting commissions for justices of the peace, to strike out every one who had openly opposed the proprietors.¹ Anything to defeat Franklin and Galloway, was the cry of the proprietary party.² Every effort was made to cause a split in the ranks of the Quakers. Emissaries were sent among the Germans, promising them two seats in the assembly from Philadelphia county if they would support the proprietary ticket.³ They were told how the anti-proprietary partisans sneered at the German vote, and how Franklin had said that "the great number of German boors herding together had a tendency to exclude the English language."⁴ His enemies further intimated that he was aspiring to the governorship⁵ under the royal administration, which might soon be

¹ Penn MSS., *Supp. Proc.*, W. Plumstead to T. P., Nov. 19, 1764. The proprietors, it may be said, ordered the governor not to appoint to office a member of the council who refused to sign a petition against royal government. P. L. B., viii, T. P. to John Penn, Nov. 10, 1764. John Lukens, the surveyor-general, who had petitioned for royal government, was dismissed from office. *Ibid.*, Dec. 14, 1765.

² *Shippen Papers*, pp. 204-206.

³ "To the Freeholders and Electors of the City and County of Philadelphia."

⁴ The friends of Franklin, while not expressly denying that he might have made such a statement, desired to obtain the German vote, and therefore made the following explanation: "'Tis well known that boor means no more than a country farmer, and herding signifies flocking or gathering together, and is applied by the best English writers to harmless doves and to ladies in distress!" "Freeholders and other Electors of Assemblymen for Pennsylvania."

⁵ In an election address entitled, "To the Freeholders and Electors of the Province of Pennsylvania," printed in Philadelphia the following year, was the following: "You have seen how the faction in the assembly from being chosen servants have aspired to become masters. You have seen their corruption while the country became burdened with debt. * * * You have seen how the same faction have gratified an ambitious man in frequent embassies to England under pretense of extinguishing a flame designedly kindled by himself; and * * * how this man, although he originally crept into confidence under the character of a commonwealth's man with the cry of our 'constitution and charter rights' in his mouth, returned from England an arrant courtier and state tool, in order to secure

established.¹ On the other hand, the anti-proprietary party was just as zealous. Nothing was done in the campaign without the advice and approval of Franklin and Galloway, who mapped out in advance each day's proceedings. Franklin's son, William, the royal governor of New Jersey, kept open house in Philadelphia, and personally canvassed the German vote.² Vigorous replies were made to the attacks on Franklin, and the proprietary party, because it now "courted the Germans whom before it had affected to despise," was charged with inconsistency. The advantages of the royal government were in every outburst of campaign eloquence pictured in the most glowing colors; while, of course, the proprietors received equally emphatic condemnation. But the efforts of the proprietary party were to a degree successful, and nine of the anti-proprietary assemblymen, among whom were Franklin and Galloway, failed of re-election.

The new assembly, in which anti-proprietary opinion still

to himself and son lucrative offices from home, determined to maintain himself and his associates here in power by a total change of our government and a surrender of our admirable charter, in open defiance of the general voice of an injured people."

¹ Had the proprietary government been overthrown, it is probable that the anti-proprietary partisans would have done their best to obtain for Franklin the appointment as governor. See Franklin, *Works*, vii, p. 443. Writing to Dr. Smith, Feb. 15, 1765 (P. L. B., viii), Thomas Penn said: "I believe you are in no danger of having the governor turned out to make room for Mr. Franklin, and the people in general may be assured I shall use all the means in my power to prevent it, which, they may be pretty well assured, cannot be effected without my consent. * * * Though I have met with bad treatment from many people, yet all the money in the treasury would not incline me to abandon those that look upon us as able and willing to give them the necessary protection." The proprietors nevertheless were very much afraid of Franklin's power as a speaker, and as a most astute politician. "Franklin is certainly destined to be our plague," wrote the senior proprietor to Gov. Penn, Dec. 7, 1764 (*Ibid.*), "and we must deal with him here as we can. I fear nothing from any public contention, but, if his lies are believed, and I have no opportunity to remove the impressions they may make, it will be injurious to us."

² Penn MSS., *Offic. Corresp.*, ix, W. Allen to T. P., Sept. 25, Oct. 21, 1764; John Penn to T. P., Oct. 19, 1764; B. Chew to T. P., Nov. 5, 1764.

prevailed, determined to complete the work its predecessor had begun, and, much to the disgust of his political opponents, appointed Franklin special agent to assist Mr. Jackson, the provincial agent, in presenting the address and petitions to the king.¹ As certain restrictive clauses had been introduced into the first orders to Jackson, a motion to modify them was made. This gave rise to a violent debate. Norris, who had again been elected speaker, declared that, although he did not favor the recall of the petitions, he thought that the assembly had no right to delegate its powers to any man or set of men to arrange for a change of government. But he did favor an instruction to forbid the agents presenting the petitions, unless they received for that purpose positive directions from the assembly. By a vote of twenty-two to ten the house resolved that the petitions should not be recalled, and the committee of correspondence was ordered to instruct the agents to present the petitions, but at the same time to take every precaution against any infringement of the privileges of the people. It was also resolved, the following year, that the agents should obtain from the records of the Privy Council a copy of the royal assent to the "act to ascertain the number of members of assembly and to regulate elections,"² wherein all the rights

¹ An earnest protest was sent from Philadelphia to the assembly, declaring that, since it was aware how parliament was devising measures injurious to all the colonies, it should not allow the liberties of the province to be subject to the discretion of agents. The petitioners remonstrated against the appointment of Franklin, who had been so energetic in promoting the scheme to change the government, and asserted that the aid of the proprietors to ward off the proposed taxation by parliament ought rather to be requested. *Votes*, v, p. 382. William Allen also wrote to Thomas Penn, Dec. 19, 1764, (Penn MSS., *Offic. Corresp.*, ix) that it was rumored that Franklin, in pursuance of directions from the anti-proprietary party, intended to request Springett Penn, grandson of William Penn, Jr., to assume the governorship of Pennsylvania. But, as Allen himself admitted, there was very little, if any, foundation to the rumor. *Ibid.*, P. L. B., viii, T. P. to Allen, Feb. 15, 1765. Franklin's chief object in going to England was to oppose the Stamp Act. Penn MSS., *Supp. Proc.*, T. P. to Peters, Dec. 13, 1764.

² Provincial Act, 4 Anne, chap. 23.

granted by the charter of privileges were confirmed and secured.¹

When Franklin arrived in England he found Mr. Jackson very much opposed to laying the petitions before the king. He was told that for the government of Pennsylvania to continue in the hands of the proprietors would be far more advantageous to all parties. Granting that the king rejected the petitions, the agent declared that the momentary triumph of the proprietors would mean nothing, since the probability was strong that the crown would eventually resume the government, not only of Pennsylvania, but of Maryland. "A man must know little of America," said Jackson, "to suppose such a superiority would last long, and little of England to hope" that the proprietors could keep much longer a possession held by a tenure so different from that of other subjects.² Franklin, therefore, determined to find out whether, in case the king granted the petitions, the ministry would allow Pennsylvania to retain the privileges granted by the charter of 1701.³ Meanwhile Thomas Penn wrote to Mr. Chew,⁴ that, as the petitions for royal government had not yet been laid before the king, he had not thought it wise to present those he had received against it. "All the worthy inhabitants that have signed them," said he, "may be most sure that no fear of trouble will ever induce us to hearken to proposals that may be injurious to them. * * * I should think we were very unfit to be entrusted with the government of a people, could we be forced by any such application as that of the assembly to give up one of those rights granted to us for the benefit of the inhabitants of Pennsylvania." Several persons

¹ *Votes*, v, pp. 379-80, 433-4.

² Franklin, *Works*, vii, pp. 272-3.

³ "I am very well pleased," wrote Thomas Penn to Mr. Allen, Nov. 10, 1764 (P. L. B., viii), to find Mr. Jackson is to be satisfied as to the allowing all charter privileges before he presents the petition."

⁴ *Ibid.*, Jan. 11, 1765.

in England who sympathized with the anti-proprietary party then tried to persuade the proprietors to agree to a compromise of the differences existing between them and the assembly. But the proprietors refused to give up any of the rights of government,¹ and Franklin saw that the only alternative was to present the petitions. The proprietors had been well assured by some of the ministers² that nothing would be done to encourage their enemies, hence they awaited the outcome with comparative indifference.³ In November, 1765, Franklin laid before the king in council the address of the assembly, and the several private petitions accompanying it. On the ground chiefly that the king had no power to grant such a request the Privy Council decided to postpone indefinitely any consideration of the petitions.⁴ But the following year the ministry tried to persuade the proprietors to surrender the government.⁵ Lord Shelburne wrote to Gov. Penn that the king desired to have an exact estimate of the annual expense of the

¹ P. L. B., viii., T. P. to Allen, July 13, 1765; to John Penn, Nov. 30, 1765.

² *Ibid.*, T. P. to John Penn, Jan. 11, 1765; to Chew, July 20, 1765.

³ "I do not find anything to alarm me, and think, instead of injuring me, will make the petitioners appear very ridiculous." *Ibid.*, T. P., to John Penn, Nov. 9, 1765. "I have sounded some respectable members of the Privy Council about them, and think I may be very easy as to any consequences attending them. I shall endeavor to get them rejected without a hearing." *Ibid.*, to Peters, Nov. 15, 1765.

⁴ "The petitions have been considered by the king in council, and resolved not to be proper for further consideration, and postponed *sine die*, that is (to use my lord president's expression) for ever and ever. This is the most easy way of rejecting, and which they make use of when any considerable bodies of people petition, so that you may be assured we shall not have any further trouble about them. Not any of the council thought them proper to be referred to a committee, as they prayed for a thing not in the king's power to grant, nor in the least in his will, and not giving any good reason for their request." *Ibid.*, T. P. to John Penn, Nov. 30, 1765; to Allen, Dec. 15, 1765.

⁵ On several occasions prior to this the ministry had offered the proprietors a liberal compensation for the government of Pennsylvania. *Ibid.*, iv, T. P. to Peters, May 8, 1756; v, to W. Logan, June 21, 1757; to Hamilton, July 7, 1757, and June 6, 1760.

government of the province, the different funds and the uses to which they were applied being carefully distinguished. He should specify in particular the revenues that were fixed and regular, and those which were granted annually, or which expired within a given time. He was requested to furnish also a complete account of the land system and of the perquisites of government.¹ The account was duly transmitted,² but, as the proprietors declined to accede to any offers,³ nothing further was done.⁴

The proprietors directed the governor to make every effort in his power to settle the disputes between the factions,⁵ and especially to discourage the printing and circulating of partisan pamphlets.⁶ Gov. Penn found very little difficulty in obeying this order, for, in their wrath against the Stamp Act, the factions gradually lost sight of their former animosities. In fact, in 1768, it was declared that the welfare of the people would lead them to seek the favor of the proprietors, and that, if they continued to gratify the people as they had lately done, all ideas of loyalty and affection for the king would be lost, and confidence would be placed in them alone.⁷

¹ Penn MSS., *Offic. Corresp.*, x, Shelburne to John Penn, Dec. 11, 1766.

² *Col. Rec.*, ix, pp. 379-83.

³ It was rumored in Pennsylvania that, although the proprietors were disposed to surrender the government to the crown, they had not as yet accepted the offers made them, and that Thomas Penn was soon to be made a peer. Penn MSS., *Offic. Corresp.*, x, John Penn to T. P., Nov. 12, 1766.

⁴ "The ministers no doubt wish to persuade us to resign our government, and would agree to give us terms very different from those offered to our father; but with no thought of forcing us, or opinion that it can be done. If they could, why should they give hints of ten times the money? * * * I am determined not to yield to any offer that will be made to me, and have told the ministers. I am not to be frightened into compliance by Mr. Franklin or any of his tools." Penn MSS., T. P. to Peters, May 18, 1766.

⁵ *Ibid.*, P. L. B., viii, T. P. to John Penn, Dec. 14, 1765, Feb. 26, 1766.

⁶ *Ibid.*, T. P. to Smith, March 8, 1766.

⁷ Franklin, *Works*, vii, p. 417. The fact that the legal services of Mr. Chew,

Again, in September, 1773, when, after the death of Richard Penn, his son John, now junior proprietor, resumed the governorship, the assembly sent him the following address:

“May it please your Honor:

Permit us very sincerely to congratulate you on your safe return to this province and re-accession to the government. The harmony subsisting between the two branches of the legislature at the time your private affairs called for your presence in Europe, and the happiness that harmony promised to the people, induce us to receive you again in the same station and character with very sensible pleasure. But, independent of this consideration, the resolution of one of the proprietaries to assume the immediate superintendence of the province gives us additional satisfaction, as it is a measure which has been wished, and even solicited for, by our predecessors in assembly, and is certainly founded in the soundest policy; for we are confident the true interests of the proprietaries and the people committed to their care and protection are so firmly united that they cannot be separated, without doing violence to the welfare and happiness of both. Impressed with these sentiments, and convinced of your good disposition to unite with us in promoting the common weal, no endeavors on our part shall be wanting to support the honor and dignity of your government, and to secure to the proprietaries and people their just rights and liberties.

Signed by order of the house,

JOSEPH GALLOWAY, Speaker.”¹

With this utterance the history of the efforts of the Pennsylvania assembly to procure the overthrow of the proprietary system closes. The authority of the proprietors thus survived royal jealousy, family dissensions, and popular attacks.

Mr. Dickinson, and Mr. Galloway were called upon in the private affairs of the proprietors will serve to show how the spirit of faction had been hushed. P. L. B., x, T. P. to Tilghman, March 1, 1770.

¹ *Votes*, vi, p. 454.

CONCLUSION

WHEN, in 1775, Congress resolved to establish a continental army, the assembly of Pennsylvania recommended to the county commissioners that they provide arms and accoutrements, and directed the officers of the military associations which had been formed to select a number of minute men to be held in readiness. By its order also the jurisdiction of Gov. Penn was superseded by that of the revolutionary Committee of Safety. This body was composed of twenty-five, later of thirty-three, prominent men, under the presidency of Franklin, and was empowered to call the volunteer troops into action, to pay and support them, and generally to provide for the defense of the province against invasion and insurrection.¹ But, in spite of the sympathy shown by many Quakers for the colonies struggling against the oppressive measures of parliament, the soldiers in the associations refused to sign certain regulations of the Committee, if the Quakers were exempted from service.² Efforts were then made to induce the assembly

¹ *Votes*, vi, p. 600 *et seq.*

² The attitude of the Quakers is well shown in the statement of the Meeting for Sufferings in Philadelphia, Nov. 1, 1769: "We seriously exhort all carefully to guard against being drawn into measures which may administer occasion to any to represent us as a people departing from the principles we profess; and that such who have been so incautious as to enter into engagements, the terms and tendency of which they had not fully considered, may avoid doing anything inconsistent with our principles, ever bearing in mind the deep obligation we are and have been under to the king and his royal ancestors, for their indulgence and lenity granted to our predecessors, and continued to us. Should any manifest a disposition to contend for liberty by any methods or agreements against the peaceable spirit and temper of the gospel, which ever breathes peace on earth and good will to all men, we must declare that we cannot join with such, and that we firmly believe a steady, uniform conduct under the influence of that spirit will most effectually tend to our relief from every kind of oppression."

to prescribe some pecuniary equivalent for exemption, but by their tacit refusal the Quaker members of that body prevented any action from being taken. While the matter was under discussion, Congress recommended that companies should be formed of all persons between the ages of sixteen and fifty. The Quakers desired to be exempted, and in support of their request pleaded their non-combatant principles, and their religious liberties as guaranteed by the "Laws agreed upon in England" and the charter of privileges. Addresses also were sent from various religious sects professing similar tenets, and praying for exemption, although it was stated therein that their principles were to feed the hungry, to give the thirsty drink, and when necessary to render tribute. But this exemption was strongly opposed by both officers and privates. They declared that the principle of non-resistance was not consistent with the maintenance of the liberties of America, and was destructive of all society and government. They asserted that the Quakers were withdrawing their persons and fortunes from the service at a time when most needed; so that, if the friends of liberty succeeded, the Quakers and their posterity would enjoy all the advantages without endangering person or property; but in case the patriots failed, the Quakers would risk no forfeitures, and, having merited the favor and protection of the British, would be rewarded by promotion to office. Their plea of religious scruples was not valid in the light of a correct interpretation of the charter of privileges, nor by a just view of Penn's own principles, for in the royal charter he had accepted the office of captain general with the customary powers attached. If the colony was intended for Quakers exclusively, how could any persons, except Quakers, be made officers? They thought that self-preservation was the first law of nature, and that those who withdrew themselves from the service were not entitled to the protection of society. Passive obedience and non-resistance, therefore, they believed

to be incompatible with freedom and happiness.¹ At length, April 5, 1776, the assembly resolved that, with the exception of ministers, schoolmasters, and certain classes of servants, all able-bodied persons between the ages mentioned by Congress, who did not join an association for the protection of the province, should contribute an equivalent. The rate fixed for exemption was £3, 10sh. The assembly also issued a number of regulations for the better management of the military associations.²

The recommendations of Congress concerning the raising of troops having been carried into effect, the next subject of attention was the further recommendation of Congress to form commonwealth governments. But considerable doubt existed in Pennsylvania as to whether the assembly or some other body should do it. A meeting held in Philadelphia, May 20, 1776, resolved that a protest should be immediately entered against the power of the assembly to carry out the suggestion of Congress, and that a convention should be chosen for that purpose. It was declared that the assembly derived its authority from the king, and that, to some extent at least, it was in immediate communication with the governor, who was that monarch's representative. Still it was agreed that, until a new constitution emanating from the authority of the people represented in a convention of at least one hundred members could be placed in operation, the assembly should be permitted to exercise all powers necessary for the safety and convenience of the province. As the assembly was still composed mainly of adherents to the old *régime*, these statements, when embodied in a formal remonstrance and presented to it, were promptly tabled.³ Thereupon, June 18, a provincial convention of 108 members, in which each county was equally represented, assembled in Philadelphia. Here it was declared that the suggestion of Congress should be approved, and that the present government of the province

¹ *Votes*, vi, pp. 671-5.

² *Ibid.*, p. 658 *et seq.*

³ *Ibid.*, pp. 726-7.

was not fitted to meet the exigencies of its affairs. The resolution was then made that a constitutional convention of eight representatives from each county should be called to form a new government. Every person proscribed by a committee of inspection or safety as an enemy to the liberties of America, and not yet restored to the favor of his country, should be excluded from the franchise; and every elector, if required, should take an oath or affirmation that he did not hold himself in allegiance to George III, and would not oppose the establishment of a free government within the province, nor the measures adopted by Congress against the tyranny of Great Britain. The convention also divided the province into districts, appointed the necessary judges, and issued an address to the people outlining the measures requisite for electing a constitutional convention. This body met July 15 and chose Franklin president. After a session of two months the constitution was completed, read in the convention, signed by the president, and, September 28, committed to the Council of Safety with directions to deliver it to the general assembly of the commonwealth at its first meeting.¹

During the entire period of its existence this constitutional convention assumed the whole political power, levying heavy taxes on non-volunteers, and ordering the various courts to imprison for a number of offenses. Against these proceedings the provincial assembly, as it departed forever from its abode of authority, lifted up its voice in feeble protest.² Thus fades from view, September 26, 1776, the last vestige of proprietary government in Pennsylvania.

¹ Hazard, *Register of Pa.*, iv, pp. 161, 193, 209.

² *Votes*, vi, p. 764.

BIBLIOGRAPHICAL NOTE

As will be observed by reference to the foot-notes, this work is based almost wholly upon original authorities. Of these by far the most important is the large collection known as the Penn Manuscripts, now in possession of the Pennsylvania Historical Society and accessible at the library of the Society, 1300 Locust street, Philadelphia. The greater portion of these manuscripts came into the possession of the Society in 1870. Through an oversight of a member of the Penn family they had been sold for waste paper, but fortunately their value was recognized, and, having passed into the hands of Edward Allen and James Coleman, of London, they were catalogued and offered for sale. The attention of the Society was called to the value of the collection, and Mr. John Jordan, Jr., at once cabled to England and obtained the refusal of it. Having learned, however, that some of the manuscripts had been sold before his cablegram was received, Mr. Jordan again cabled and secured what remained. He advanced the money required to purchase the collection, and \$5,000 was subsequently raised by subscription to reimburse him, and to bind the papers. To this list of manuscripts others have since been added. These consist of material obtained from descendants of persons officially connected with the Penns in the administration of the province, such as members of the Hamilton, Peters, Physick and Coates families, and of what might be called the Penn-Forbes Papers, among which are some of the manuscripts

purchased from the original collection prior to the negotiations of Mr. Jordan.

While some of the manuscripts relate to the settlement of Pennsylvania and to the founder of the province, the greater portion is composed of the correspondence of the descendants of William Penn with the deputy governors and with their agents in Pennsylvania from 1729 to 1775. With a few exceptions, the letters and papers are pasted on the alternate leaves of eighty-seven large volumes, and sufficient remain unbound to make one hundred volumes when the arrangement is completed. Much yet has to be done before the collection will be properly accessible to the historical student. Aside from the feasibility of printing the papers, the publication of an index or brief synopsis of the matters contained in them would save considerable time. In cases where a table of contents has been prefixed to a volume, it rarely gives more than the names of the correspondents. While, therefore, it is an absorbingly interesting, it is also a very tedious and arduous piece of work to wade through this mass of material, by far the larger portion of which has hitherto been wholly unexplored. But the kindness and courtesy of Dr. F. D. Stone, the librarian of the Historical Society, and of his corps of assistants, in placing at the disposal of the investigator all the resources of the library, more than compensate for the inconveniences just mentioned—inconveniences which are unquestionably due to the enormous size of the collection, and which, by a continuance of the efforts that Dr. Stone has for some time been making, must soon disappear. It is to be hoped, therefore, that with these materials at hand a history of colonial Pennsylvania may be forthcoming which will be exhaustive in character, and not merely, as the foregoing is, an outline chiefly of its territorial and governmental institutions.

Most of the titles of the volumes of manuscript readily

suggest the contents, but in a few cases a brief description seems advisable.

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